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Maryland.

CONSTITUTIONAL CONVENTION COMMISSION.

COMMISSION MEETING

John Holiday Room, Holiday Inn

Baltimore, Maryland

October 14, 1966

VOLUME VI

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CONSTITUTIONAL CONVENTION COMMISSION

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WILLIAM C. WALSH

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JOHN C. BROOKS
Executive Director

KALMAN R. HETTLEMAN
Assistant to the Executive Director

* * * * * * * *

William Prescott Allen *(Resigned January 5, 1966)*
Ernest N. Cory, Jr. *(Resigned May 13, 1966)*
Walter R. Haile *(Resigned December 20, 1966)*
William J. McWilliams *(Resigned September 10, 1965)*
Ridgely P. Melvin, Jr. *(Resigned August 2, 1966)*
George L. Russell, Jr. *(Resigned July 12, 1966)*

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700 Mercantile Trust Building
Baltimore, Maryland 21202

CONSTITUTIONAL CONVENTION COMMISSION

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(appointed on July 12, 1966)
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(appointed on November 9, 1966)
Melvin J. Sykes
(appointed on July 12, 1966)
Lewis D. Asper, Reporter

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(served until May 13, 1966)
George L. Russell, Jr.
(served as Chairman until July 12, 1966)

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(served until June 6, 1966)
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* * * * *

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William J. McWilliams
(served as Chairman until September 10, 1965)
Ridgely P. Melvin, Jr.
(served as Chairman from September 10, 1965 to August 2, 1966)
George L. Russell, Jr.
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Harry Bard
(served until June 6, 1966)
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(served until June 6, 1966)

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L. Mercer Smith
John B. Howard, Reporter
(appointed on May 12, 1966)

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E. Dale Adkins, Jr.
(served until June 6, 1966)
William Prescott Allen
(served until January 5, 1966)
Walter R. Haile
(served from July 12, 1966 to December 20, 1966)
William J. McWilliams
(served until September 10, 1965)
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(appointed February 26, 1966)

* * * *

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(served until January 5,1966)
Ernest N. Cory, Jr.
(served until May 13, 1966)
Walter R. Haile
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Edward T. Miller
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Martin D. Jenkins
Margaret Kostritsky, Reporter

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(served until June 6, 1966)
Hal C. B. Clagett
(served until June 6, 1966)

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(served until June 6, 1966)
Charles Della
(served until June 6, 1966)
Stanford Hoff
(served until June 6, 1966)
Clarence W. Miles
(served until June 6, 1966)
George L. Russell, Jr.
(served until June 6, 1966)

CONSTITUTIONAL CONVENTION COMMISSION

Meeting of the Constitutional Convention Commission held on Friday, October 14, 1966, at 9:30 a.m., at John Holiday Room, Holiday Inn, Baltimore, Maryland.

PRESENT:

H. Vernon Eney, Esquire,
Chairman of the Commission
Honorable E. Dale Adkins, Jr., Member
Calhoun Bond, Esquire, Member
Mrs. Elsbeth Levy Bothe, Member
Dr. Franklin L. Burdette, Member
Richard W. Case, Esquire, Member
Hal C. B. Clagett, Esquire, Member
Charles Della, Esquire, Member
Mrs. Maurice P. (Leah S.) Freedlander, Member
James O'Conor Gentry, Esquire, Member
Walter R. Haile, Esquire, Member
John R. Hargrove, Esquire, Member
Stanford Hoff, Esquire, Member
Dr. Martin D. Jenkins, Member
Honorable William Preston Lane, Jr., Member
Robert J. Martineau, Esquire, Member
Edward T. Miller, Esquire, Member
Charles Mindel, Esquire, Member
John W. Mitchell, Esquire, Member
Mr. E. Phillip Sayre, Member
Alfred L. Scanlan, Esquire, Member
Melvin J. Sykes, Esquire, Member

Reported by:
C. J. Hunt
and
W. P. Banister

ALSO PRESENT:

John C. Brooks, Esquire, Executive Director
Mrs. Margaret Kostritsky, Reporter
Stephen H. Sachs, Reporter
Dr. John H. Michener, Research Assistant

THE CHAIRMAN: Because of the lateness of the hour, I think we had better go ahead without waiting for the other Members.

We circulated just the day prior to the last meeting the July minutes. We did not act on them at that meeting because you had not had the chance to read them. Are there any additions or corrections of those minutes? If not, they will stand approved as circulated.

The minutes of the August meeting were in the folder handed to you this morning. We have not had the chance to read them, and we will not act on them now. I do hope to act on them before the conclusion of this session. If you possibly can, will you please look them over at some interval during the sessions today or tomorrow?

The Secretary is not here. John, do you have anything to report?

MR. BROOKS: Concerning arrangements, today at lunch we are supposed to have lunch in here at the round tables over on the side. This evening's dinner will be in one of the dining halls upstairs. Tomorrow, lunch will be a buffet up on the rooftop, and for those who indicated they would like lunch or dinner, rather, Saturday night, tomorrow night, we will have an ala carte arrangement in the Flamingo Room, which is the main dining room on the first floor, and there you might sign your bill, if you are staying here, put your room number; if not, if you will just put Constitutional Convention Commission. They are supposed to accept that without any delay or haggling. I hope so.

Concerning parking, some of you have parking tickets to be validated. You might put your names on the back of those, and then we can collect them and while we are meeting, go ahead and get them all validated and returned to you. If you have any problems while staying here, let me know. We have one of the managers or assistant managers upstairs specifically assigned to this group to help resolve any problems that might arise.

That is all I have.

THE CHAIRMAN: The Commission continues to be plagued by lack of money, lack of personnel and lack of time and perhaps the last is the most critical of all. We are now about three and a half months behind the schedule that we set for ourselves last February. Much more important than that is that we are so close to the time when we must have our Report completed that we can accomplish it only by extraordinary effort.

The volume of the Commission's work, as all of you know, has far exceeded anything that we anticipated, and the most urgent need at the moment is for additional professional help in trying to pull together in proper form the various Committee Reports and memorandum to be excluded in the Final Report of the Commission.

We have not yet tried to work out, and I haven't suggested to the Commission as yet, any procedure for the circulation of the Final Report and its approval by the Commission. I think it is quite obvious from the limited time left to us that we cannot possibly hope to conclude our consideration of the individual Committee

Reports and the draft of the Constitution and the draft of the Report by having simply the regular Commission meetings in November and December. We will probably, therefore, have to work out some procedure under which the draft of the Report can be circulated to the Commission Members, and perhaps have some special sessions to consider only the language of the Report itself. We are not attempting to complete the work book by January. I think that would be utterly impossible. John and I have interviewed some people that we think have the professional qualifications to assist in the editorial phase of the work. It is a problem of whether we can get sufficient funds, and whether these people can get sufficient leave of absence to assist us. We hope to be able to work this out inside the next week or ten days.

In the meantime, I would greatly appreciate if all the Members of the Commission between now and our next meeting, which as you know, is Monday and Tuesday the week after next, that is, the 24th and 25th, be giving some thought to the problem of the circulation of the Report and agreement on it. I don't think there is

going to be time for Members to prepare dissenting reports, if there should be any necessity for such, and I don't know that there is and would hope that there is not, but I have no doubt that there will be positions or final recommendations taken in the Report as to which various Members will feel strongly enough that they will want to note their dissent, at least on that particular matter.

Thinking about how this could be best accomplished, one thought that has occurred to me that is used in other instances would be to have in effect footnote dissents, where a particular statement or recommendation is made in the Report, and any Member or Members desiring to indicate their dissent therefrom, without the necessity of spelling out all the reasons for it, simply do it in the footnote. You just put a footnote and say, Messrs. So-and-So, or Mrs. So-and-So, dissent or have a different view.

There may, of course, be other methods, and there may be better methods. There may be some matters on which Members or a group of Members feel strongly and

feel that it is urgent that their views be expressed. I would hope this was not simply because I hope that the Report itself, regardless of the recommendation made in the Report on particular issues, would state the pros and cons to the extent that it is possible to do so fully, so that the views of dissenting Members would appear, perhaps not labeled with their names but appear in the statement of the pros and cons on the question.

This also becomes a question of mechanics and situations. A little over a year ago when John and I first tried to make up a budget for the Commission, we had nothing to go by, and in estimating an item for printing of the Report, we estimated that the Report would be about 150 pages, and frankly, this was a figure that was almost just picked out of the air. It was based on some experience that I had had on other commissions and some review of reports of other commissions, but since we had no report of a commission like this to go on, and since the nature of our Report has sort of evolved in our own thinking over the past year, the estimate wasn't very accurate. As of the present time, it seems to me

well nigh impossible to keep the Report down to 150 pages, and my guess is that, as of now, that the Report will be probably twice that long.

This, too, poses a problem, because if you get the Reports too long, then it becomes necessary to prepare a summary of the Report for distribution, and this is still another problem. I would hope that the Report could be kept to a maximum of 200 pages, but in view of the fact that it is our function to state both sides of the question, it seems to me this is going to be exceedingly difficult to do.

One of the practical problems, and this, too, is something you can be thinking about that will have to be resolved, is whether this Report should include a reprint of the existing Constitution. Now, as you know, in fine print, and without annotations, the existing Constitution, including the Amendments that are on the ballot in November, is roughly 100 pages, 98, I think; and I would hope our Report is not in type that small, so that this one item alone, you see, could add considerable bulk to the Report, and it is a decision that the

Commission will have to make, and I would like you to be thinking about it.

Also, I think it is quite obvious that from the materials that we have accumulated and that the Commission has had in the hearings, that the work book will not be a work book. It will be work books, and this is one of the reasons why it is just simply not possible to contemplate having this published by the end of this year, or the middle of January.

Our present target on that would be to complete that work by spring, April or May first, somewhere in there. That, of course, as you know, will be primarily an editing job. It will be pulling together the research memoranda and digesting testimony and other information, original source information that we have.

We are not under quite the same pressure on that, but with the Legislature being in session the first of the year, and it probably being necessary for this Commission to appear before the Legislature in order to discuss and present the bill that the next Legislature will have to consider, it means that the Commission cannot

contemplate that its activities are going to cease on January 19.

In that connection, and thinking ahead a bit, I wish also that the Members of the Commission would be giving thought to the practical problems with which we are confronted here. One of the immediate problems and one of the reasons we have the Report of the Committee on Convention Procedures on the agenda this week is the question of whether the bill providing for the Convention next year should be submitted to the Legislative Council, or whether it would be desirable to have the bill presented at the first session, or the first day of the session of the new Legislature.

This poses a practical problem because, while offhand one would think it certainly would be desirable to present it to the Legislative Council, it must be kept in mind that the Legislative Council is a sort of a lame duck council. It is the remnant of the unapportioned Legislature and the Legislature that takes office next January, the apportioned Legislature, will be somewhat different in composition and perhaps in attitude.

I suggest this to you now simply so that you can be thinking about it between now and the time the Report of that Committee comes before you.

Most of the Committee Reports are in pretty good condition. We are seriously lagging on at least one and perhaps two. This is partly because of the nature of the problem. The problems with which we are confronted on the matter of political subdivisions are of great importance, great magnitude and are trailblazing, and for that reason we have put the Report of that Committee, which still involves policy considerations, rather than actual language, at the end of the session, to take it up on Sunday. I hope that we will be able to complete all our other Reports so that only that Report will be open for discussion on Sunday morning. We then hope that that Committee will be able to come back to the Commission on the 24th, with a draft embodying precise language.

I hope that we will be able to conclude today the first three Reports, the Second Report of the Committee on Finance and Taxation, the Report of the Com-

mittee on Elective Franchise, and the Report of the Committee on Convention Procedures, and that we will perhaps be able also to take up the Committee on Judiciary. If not, that would move ahead tomorrow morning.

I think we can complete our consideration of all Reports if we adhere to the rules of debate, which were adopted at the suggestion of one of the Commission Members, or several of them last meeting, and which I circulated to you.

May I suggest to you that while we will follow the same rule as to reconsiderations that we have heretofore followed, we are too far along to be reconsidering any matters heretofore acted upon, unless they are of really vital importance, and as heretofore, a Committee desiring reconsideration will be permitted to do so if the motion is approved by the Commission and on motion of a Member, approved by the Commission we can reconsider. Each of these will be necessarily without debate.

The rules of debate on motions are not intended to apply to questions, and therefore we will follow our usual procedure in the presentation of the Report. The

Committee chairman will present the Report, and then we will ask for questions and comments. I am not attempting to limit Members to one question or to be heard at one time on questions or to three minutes or to anything of the sort. I ask only that you make your questions pertinent to the point and your comments very brief. However, when a matter is one which is to be acted upon by the Commission, I would prefer that the person desiring to have it acted on make the motion promptly. If it is seconded, it will then be subject to the rules of debate, and because I have difficulty following the time closely on a wristwatch, I have brought my large old-fashioned watch so that I can try to keep time on it.

Are there any questions as to our procedures or accommodations or anything else? Excuse me, Dick, before I forget it.

I will adhere to what I promised you at the last meeting. There will be a session this morning, this afternoon and this evening. We will not go beyond 9:30 on the evening session. There will be a session tomorrow morning and tomorrow afternoon. There will be no

session tomorrow evening, and there will be a session Sunday morning, and we will try to adjourn promptly at 12 noon on Sunday.

DR. JENKINS: Beginning at what time Sunday morning?

THE CHAIRMAN: I would like to begin at 8:30 on each of them, but I am afraid that that is too early, because so many are coming in. Is there any reason we cannot begin both Saturday and Sunday sessions at 9?

DR. JENKINS: Schedule them at 8:30 a.m. and begin at 9.

THE CHAIRMAN: We have been pretty fortunate in the scheduling of our meetings, at all except the first day. We have started within a few minutes. I would rather schedule it for a time and ask people to be there. Is there any objection to having Saturday's and Sunday's meetings at 9 o'clock? All right. That is what we will do. Any further question?

MR. CASE: I have this question, Mr. Chairman, which is really not a question. It is more a statement. I am disturbed about the agenda, although I am fully

cognizant of the fact that the Chairman has the absolute right to set the agenda, but I have consistently stated and stated for the record in Easton that I was particularly interested in the Report of Mrs. Bothe's Committee on Miscellaneous Provisions. I also stated for the record, I believe, at the last meeting, that I could not be here tomorrow or Sunday, although I could possibly be here tomorrow morning. I note from the prepared agenda that Mrs. Bothe's Report is not going to be brought up until tomorrow afternoon, when it is absolutely impossible that I be here, and for these reasons I would request, and again let me say with the full realization that the Chairman has the absolute right to set the agenda, but I would request that the Report on Miscellaneous Provisions be brought up sometime during either today or tomorrow morning.

THE CHAIRMAN: I think we can work that out, Dick.

Any further questions or comments? All right, then, the next meeting, as you know, is Monday and Tuesday, October 24 and 25. Tentatively we have been planning

to hold this meeting at the Brown Estate in Harford County. We will advise you about this. John has checked and the accommodations seem to be or will be by that time, sufficient and suitable. That will be a two-day meeting.

If there are no further questions, then we will proceed to a consideration of the Second Report of the Committee on State Finance and Taxation.

Mr. Case?

MR. CASE: In order to conserve time, Mr. Chairman, I am not going to attempt to repeat or even summarize for that matter the background material which underlies this particular Report. Suffice it to say that our State is perhaps as well-known in the governmental field for a strong executive type budget provision in its Constitution as it is known for anything else, and this has had a rather interesting history, which is traced in the Report, and I should merely say that prior to 1916, Maryland, like most of the other States in the country, dealt with the method by which monies were expended from the Treasury on almost a piecemeal basis. If the Governor needed appropriation for a given depart-

ment, he would sit down with the department heads, figure out how much they needed, and then he would take that matter to the Legislature as a subject and would get an appropriation from them, based on whatever he could get out of them for that particular thing.

In 1916, a great revolution took place in this State, and because it was in that year that the so-called Budget Amendment was adopted as a result of a reform commission's work that established one of the first, if not the first truly strong executive budgets in the country, and with slight modifications, but important modifications, this system has continued from that time.

In the course of the work that our Committee did in this particular subject, I had occasion to have a very interesting conversation with Dr. Clark Alberg, who was the former Budget Director of the State of New York and is now the Executive Vice-president of Syracuse University, who I knew in other connections, and Dr. Alberg has told me, and I just cite him as an example, that the method of doing things here in Maryland budgetwise

stands very high on the list of States throughout the country. Of course, I have learned this from our own budget people, but would to some extent discount what they say, but I think it is interesting and instructive to know that such a recognized authority as Clark Alberg would say that about the State of Maryland.

The only significant change that the 1916 budget bill has had was a change brought about by the Sobeloff Commission's recommendations in 1952. Prior to the recommendations of the Sobeloff Commission, the budget and budget bill were submitted to the General Assembly by what we call line items. That is to say, each particular job or position in the State was given a line and an item, and there were so many lines and they ran literally into the thousands that nobody could make any sense out of the entire document as a whole, so the Sobeloff Commission, retaining nationally known consultants, recommended to the General Assembly and through them to the people, an amendment to the budget, an amendment which did away with the line item method of reporting and infused into the plan what is known as

the program type budget, which is what we have today. The program budget establishes amounts for programs and then leaves the breaking down into the myriad of items to the various departments involved, so that is the basic picture. Prior to 1916 a piecemeal hit or miss method of controlling the expenditures of State funds; after 1916, and as a result of the commission, a strong executive budget written into the Constitution as the people's safeguard as to how their money is to be spent; the recognition that this was a good piece of work by experts in the field; a further amendment in the early Fifties converting the line item budget to the program type budget.

This, then, was the situation as we found it in the beginning of our consideration of the subject in the early summer, and this Committee has held a number of public hearings on this particular item, one of which lasted all day, the transcript of these hearings running into several hundreds of pages. We have interviewed the people that we felt were best able to assist us in determining what, if anything, could be done to improve the

situation, and they include, of course, the budget people, our own budget people, Messrs. Rennie and Slicher; they include Mr. Benton, the Budget Director of the City of Baltimore; they include Mr. John Lauber, the Budget Director of Montgomery County, whom we consider to be one of the finest local budget men in the State; other consultants were interviewed. Special attention was paid to spokesmen for the Public School System, and we all have more to say about this at a later time because there is and does come in the material that you have before you a point where a judgment had to be made with reference to the Public School System and its position, vis-a-vis other departments of the State Government, but I shall save the discussion with respect to those particular items until a later point in the discussion.

Now, the Committee recommends in general that the strong executive type budget system be continued in this State, and it further recommends that there be certain modifications of the existing Constitution which we think will improve efficiencies and in general establish a more workable and a more consistent system, and with

those general remarks, I will now, if you will turn to Page 9 of the Report, I think, Mr. Chairman, probably it would be adequate procedure if I read and then comment very breifly on these particular Sections, and if any of you have and wish to follow the provisions of the existing Budget Amendment, it is to be found in Article III, Section 52, Subsections 1 to 15. They are on Pages 30 to 34 in your red books.

One other thing that I might say before getting into the general discussion of these particular provisions and that is that you must keep in mind the two words of art, which are to be found throughout these amendments. One is the word, budget. The budget is the proposal compiled by the Governor's Office, through the Budget Bureau of the various programs and amounts which are to be spent for those particular programs. It is a big book, about that thick, containing all of the various items, containing a lot of information which is not particularly applicable to payouts, such as balance sheets, what business would call P and L statements, where the State stands as a matter of fiscal stance. That is the

budget. The budget bill is something entirely different, although very close to it. The budget bill is the actual bill that goes into, or is introduced into the General Assembly. It does not contain the budget message, for example, it does not contain a P and L statement. It does contain appropriations for programs, so we are going to be talking about two things, and don't let's get them confused: The budget and the budget bill.

Very well. Section 1 is really a consolidation of Subsections 1 and 2 of Section 52, and it says, The General Assembly shall not appropriate any money out of the Treasury except by a budget bill or a supplementary appropriation bill, as hereinafter provided.

This is declaratory and in effect a combination of the first two Sections of Section 52 and perfects no change in substance in the present provisions.

Subsection 2 says --

MR. SCANLAN: Mr. Case, Mr. Chairman, are we going to go through the proposal as to individual Sections generally and then come back and take them up one at a time?

THE CHAIRMAN: I think probably we can take them up one at a time initially, don't you, Mr. Case?

MR. CASE: It makes no difference to me.

THE CHAIRMAN: Is there any comment, then, or question on Subsection 1? If not, proceed to Subsection 2.

MR. CASE: Subsection 2 says, On the third Wednesday in January in each year (except in the case of a newly-elected Governor, and then not later than ten days after the convening of the General Assembly), unless such time be extended by the General Assembly, the Governor shall submit to the General Assembly a budget for the next ensuing fiscal year.

This is the same as the current provision, which was an amendment effected only two years ago to dovetail the introduction of the budget to the General Assembly, in conformity with the requirement for 70-day sessions.

Such budget shall contain a complete and balanced plan, by programs, of proposed expenditures and shall also contain estimated revenues for said fiscal

year, all in such form and detail as the Governor shall determine.

That sentence does contain two changes which are declaratory of existing practice, but are not found in the existing Budget Amendment.

These are that there must be a balanced plan. That means that the budget itself must show on its face that expenditures will not exceed anticipated revenues, and secondly, that the budget must be constructed by programs. I said earlier that the Sobeloff Commission recommended this, and while the General Assembly passed a bill, it only implemented a half of the Sobeloff Commission's proposal, which was that the budget bill, as distinguished from the budget, should go in by programs. As a matter of practice, the budget itself goes in by programs today, but there is nothing in the Constitution that requires it. As was recommended by the Sobeloff Commission and by our Committee, this particular provision supplies the deficiencies.

The budget shall contain an estimate of all appropriations required by this Constitution or by law.

This and the next sentence I shall read together.

It shall show the estimated surplus or deficit of revenues at the end of the preceding year. The budget shall contain such additional information as may be required by law.

If you will turn to Pages 11 and 12 of the Report, you will see at the bottom of Page 11 and continuing on to Page 12 in indented form a great deal of what seems to be detailed material, and this material, which is detailed, it doesn't seem to be, it is, is found in the present Constitution. It is a result of a piecemeal amendment between 1916 and '52 and specifies what the budget shall contain. Our Committee felt that many of these things were either superfluous or did not arise to constitutional dimensions, and we therefore attempted to simplify the requirement of what should be in the budget from the constitutional standpoint to the last three sentences appearing in italics at the top of Page 10. I should call your attention only to one thing, that the Committee felt that as far as specificity was con-

cerned, the only thing really that was mandatory was a showing of the estimated surplus or deficits of revenue. We felt that this should be a constitutional requirement. Other than that, we felt that the form, the information contained in the budget, et cetera, should be as required by law.

THE CHAIRMAN: Any questions? Are there any comments?

I have a question or a matter I would like you to comment on, Mr. Case. Your Report makes mention of the fact that you have added in here a requirement, not in the present Constitution, that the budget shall contain a complete and balanced plan by programs. I take it, then, that it would be impossible under this provision to have a budget provide for a deficit?

MR. CASE: That is correct.

THE CHAIRMAN: And this Section taken in conjunction with Section 4, I think, and the other Sections, would make it impossible for a budget bill to provide for deficit financing.

MR. CASE: That is correct.

THE CHAIRMAN: So that even in an emergency, the State could not do as the Federal Government does, for instance, and provide deficit financing?

MR. CASE: That is correct.

THE CHAIRMAN: I think it would be helpful in the record if you could comment on that.

MR. CASE: Of course, this is traditional in our State. We do not today as a matter of practice count on deficit financing, and as far as except for one occasion, I think there has never been -- which is a minor point at the moment -- there has never been a situation where we have had deficit financing in this State since 1916. Actually, this was possible before the Budget Amendment of 1916, and it was one of the evils that was sought to be corrected by the Goodnow Amendment and by the resulting Budget Amendment of 1916.

It is one of the cornerstones of the great respect which our State has in fiscal circles and our Committee definitely felt that it ought to be, if anything, strengthened.

MR. SCANLAN: How many other States have

similar cornerstones?

MR. CASE: I can't answer that. I just don't know. I am sure that New York must. Michigan, I know, does, because they lost a very great deal of respect throughout the financial world by reason of their deficit financing during Soapy Williams' regime, as I recall.

MR. SCANLAN: They had a prohibition, I mean, they had a requirement of a balanced budget and a balanced budget bill in Michigan in the Constitution. How was he able to have any deficit financing?

MR. CASE: They didn't have it.

MR. SCANLAN: I was asking the States that do.

MR. CASE: I was saying they did not.

MR. SCANLAN: Does New York have a similar provision?

MR. CASE: I really don't know. I don't think so.

MR. SCANLAN: Can you give me any estimate of the total of 50 States, how many have similar? Would you say it was very unique?

MR. CASE: I can't answer that. I really

don't know. It was such a fundamental thing to us that we didn't make any research on it.

MR. SCANLAN: I am not disputing this might be a good thing. I just wanted to get some picture of what the situation is in the country generally.

MR. CASE: I think when it started, it was unique, and it probably has been copied.

MR. SCANLAN: I have some vague feeling that Virginia has provisions something like this, and at times when it was criticized, that it has resulted in failure in recent days to appropriate sufficient money for schools and mental health, that sort of thing. If you don't know, you don't know.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: Over recent years there has been considerable criticism of the great inaccuracies of the Controller in estimating surplus. Is this the same estimate you are calling for here?

MR. CASE: Yes, Mr. Gentry. The criticism has been with the people, the method by which the estimates have been made by, not by the fact that an estimate

should be made. We got considerable static on that point in hearings before our Committee, but estimates can be as good as they can be bad, depending on who makes them, and the methodology they use.

THE CHAIRMAN: The estimates are not made just by the Comptroller, but by a Board of Estimates, are they not?

MR. CASE: They are today. It is an executive function.

THE CHAIRMAN: That is something created by statute?

MR. CASE: That is right.

THE CHAIRMAN: Any further questions or comments?

Mr. Haile?

MR. HAILE: Mr. Chairman, a question: Subsection 2 says that such budget shall contain a complete plan of proposed expenditures. The question is, does that include expenditures for capital projects?

MR. CASE: It does not.

MR. HAILE: That is, expenditures of current

receipts for capital projects?

MR. CASE: This does not deal with the bond issues.

MR. HAILE: Sometimes it deals with road projects.

MR. CASE: It deals with any expenditures of general fund revenues no matter what it may be used for.

THE CHAIRMAN: Any further questions?

I have one question. I assume the parenthetical phrase in the second, third and fourth lines are phrased in that manner because of the fact that you might not perhaps have the session begin on the third Wednesday in January?

MR. CASE: This is subject to any change that the Commission desires to make.

THE CHAIRMAN: I wonder if it would be desirable -- I take it, the budget is to be only at a regular session, and I wonder then if it would be desirable to say in that parenthesis, then not later than ten days after the convening of the General Assembly in regular session.

MR. CASE: You mean add the words, in regular session?

THE CHAIRMAN: Yes.

MR. CASE: That would be perfectly all right.

THE CHAIRMAN: Would there be any objection?

MR. CASE: No, sir.

THE CHAIRMAN: All right, then we will add those words.

Any further questions on this Section? If not, we will move on to Subsection 3.

MR. CASE: Now, as to Subsection 3 --

THE CHAIRMAN: As you start to comment on each Section, can you give the page?

MR. CASE: Yes, this is Page 13; also if one wants to look at the entire Article as redrafted, it will be found in the back of the Report in Appendix A through E.

Section 3: The estimates of appropriations for the legislative department, as required by law, certified by the presiding officer of eachhouse, for the judiciary, as required by law, certified by the chief judge

of the Superior Court, and for State support to local school systems, as required by law, shall be transmitted to the Governor, in such form and at such times as he shall direct, and shall be included in the budget without revision.

Now, we have been talking up to now about the advent and perpetuation of the strong executive type budget, but it must be borne in mind that we also have a countervailing principle in our constitutional framework which is known nebulously as separation of powers, and it has long been the rule in this State that there were, for these reasons, certain areas which, even the Governor, could not change when budget items came to him for submission to the General Assembly from departments of the State.

I think there would be no real quarrel with the idea that the legislative budget and the judiciary budget should fall into this category. Indeed, that has been the case since the Budget Amendment of 1916, and our Committee recommends no change in that particular area. However, the 1916 Amendment included another

feature which was novel at that time, and I think I can say with some degree of assurance that it is not the rule in a great many States that the mandated items, mandated budget items dealing with public school systems should not be subject to revision by the Governor.

I will have to give you some background now as how the school system in the State is financed.

For many years, and up to very recent time, we had what we called a principle of equalization in this State. By that I mean to say that the General Assembly would -- let's start first -- the State Board of Education would establish a minimum standard of education in terms of dollars to be spent in each County. The General Assembly would make certain specific grants and require each County to levy a certain amount -- it varied from year to year -- on the tax base, and if the amounts granted by the General Assembly, plus the amounts which were raised by the local levy did not equate to the minimum program, as established by law, then the State would make up the difference, through general fund appropriation, and this was all required by law.

A few years ago, a couple of years ago, this was changed somewhat, but the principle that I have just enunciated remains essentially the same. Today the law is, as established by the Legislature, that there shall be spent in each of the Counties a minimum of $340 per student per year. The funds are raised, again by local contributions and by State grants, and this is the result of a very complex formula which is described generally in our Report, and I don't think it is necessary to go into all of that here, but suffice it to say that the statutes establish the amount of money which should be paid by the State to the local political subdivisions for various things, and if you will look at, beginning at Pages 16 and 17, you will see these various things that the Legislature has said shall be paid for in addition to, or folded in with the general program, and what this is, in the language of the educators is the basic or minimum State program, and the basic or minimum State program, again I want to emphasize, is established by the Legislature through actual acts saying exactly what they should be, how much money shall be allocable

to each.

Now, to fund this, I come back now to the $340, to fund this, bear in mind you have got to have $340 times the number of students in each County, so the variable is the number of students. You find out just how many students there are in each County, and this required a judgment to be made by the State Department of Education, so that we will take Prince Georges County, just as an example. If there were 10,000 students in Prince Georges County, then the minimum program would be $3,400,000 for that particular County, which would be State guaranteed. Some of that money has to be raised locally, as stated in the text, but that is the State guarantee that there will be that much money going into Prince Georges County, and if it can't be raised locally through the real estate tax and so on, then the State is going to put up the difference. Now, what happens is this: That in the fall of the year, the State Department of Education determines what the State minimum program is to be or will be in each of the political subdivisions, and when that is determined, the people in the State

Department of Education discuss with the Budget Director their findings. Our Committee found that there was a genuine give and take between the two, but once a judgment is made as to what the budget shall be and it is fixed, then that is it, and when that budget gets to the Governor, by constitutional mandate, he cannot change it. It must go in that amount, and in that form to the General Assembly. This is not to say that the Governor has no control over any part of the budget for the State Public School System. He does. He has complete authority over all things that you might term administrative, such as Dr. Sensenbaugh's salary or the salary of his secretary, or the people in the head office. There are many other things that the State Department of Education does which are programs outside of actually instructing students in the local school systems, and all of these programs are subject to revision, just like any other department's programs are subject to revision by the Governor, but with respect to teaching in the public schools, there is no chance, there is no availability or room for the Governor to move.

Now, this quite obviously, the question was before our Committee, whether or not this should be changed. It was argued on the one hand that to leave it as we found it would, in effect, recognize a fourth branch of the State Government, because it would equate it with the Judiciary and the Legislative as far as the Executive budget was concerned. On the other hand, it was argued with a great deal of heat, and some light, though not as much light as heat, that this provision was the bulwark of the State's independent educational system and that it was the one thing which kept politics out of the school system. It prevented the Legislature from playing politics with the school system. It was the one shining crown in the firmament of our educational laws which was known throughout the length and breadth of this country, and to tamper with it would be great heresy indeed.

Actually, our Committee decided that the protection afforded is a protection really of one year, because the General Assembly can always change the laws upon which these budgets are based, so that what you are

really doing here is protecting the system for one year and indeed it seemed that the planning would admit that this protection would be a sound thing and this, coupled with the really great fervor that school people use in embracing this Section, plus the fact that we were assured by the people in the Budget Department that it has worked well and as a practical matter necessarily would have to work well because of the Governor's control of other parts of the State school budget, led this Committee to the judgment that the present situation should be continued in principle.

There is a modification in language. There is a list of Attorney General's opinions which carve out of this blanket prohibition that the Governor works on items which are not mandated items. We have discussed those Attorney General's opinions in our Report, but suffice it to say, we felt that the language of the prohibition should be altered slightly to conform to actually what is done today. The present provision of the Constitution says, quote, and I am reading at Page 14 of the material indented, And for the public schools;

that is all it says. Our new language says, And for State support to local school systems, as required by law.

We think this is more meaningful, a more accurate description of what happens, and we can say that this was tested on all of the school people, who found it perfectly acceptable. I won't say desirable because they are opposed to any change, but they found, after a great deal of work and including the employment of outside counsel, I might say, they have given us a judgment that this language meets with their acceptance, so that, then, Mr. Chairman, is the judgment of this Committee.

THE CHAIRMAN: Any questions?

Mr. Gentry?

MR. GENTRY: Mr. Case, you mentioned that the present system offers only a one-year protection and the Legislature can change. Are you referring to the $340 figure, that is what they can change?

MR. CASE: Yes, or they can take things out of the program or put them into the program. In other words, if you will note here, Mr. Gentry, for example,

at the bottom of Page 16, handicapped children. That is a program which says, in effect, that the State shall, through the local School Board, shall pay X-number of dollars. I think it is $800 a year for the education of handicapped children who qualify. Now, they can raise that if they want to, a thousand or 1500, or they can eliminate it altogether, by statute.

MR. SCANLAN: How many other States have a provision in their Constitution which would prohibit or would make it mandatory on a governor of a sovereign state to accept the school system's budget as certified to him by the people most interested in it, namely those administering the school system?

MR. CASE: Again, Al, I can't say. We didn't make a compendium of other States. I think it is fair to say there are few, there are but few.

MR. SCANLAN: Very few?

MR. CASE: Yes.

MR. SCANLAN: What was the answer to the proponents, those who wanted to keep this language or the language you have arrived at, what was their answer to

the point you made to this Commission that in effect it is a constitutional provision that protects just the budget for one year?

MR. CASE: They said in effect that this is exactly what they needed and had to have.

MR. SCANLAN: I know, but why?

MR. CASE: Well, there are a number of reasons but I can capsule them all by saying to avoid political interference in school system, to avoid what they fear to be political coercion.

MR. SCANLAN: Aren't there other States with very fine school systems such as maybe California that don't have a provision like this?

MR. CASE: Undoubtedly this is true. We were cited to a number of instances where these provisions were absent and where it was stated that the school systems were riddled with politics, and this had been or this is the cardinal point.

MR. SCANLAN: But you pointed out, I believe, in your Report to the Commission that the Legislature, the representatives of the people, if they wanted to play

politics with the school system, could, in effect, decimate it by reducing the mandated items.

MR. CASE: They can in effect decimate it, but legislators have to be elected and school people have the curious way of being able to marshal vast and great resources when it comes to legislative, throwing the spotlight of intelligence on a given piece of legislation.

They, let's put it very bluntly, in terms of political action, the school system is willing to take chances with the Legislature, but it feels that a Governor who was anti-public schools, who -- well, anti-public schools, could hurt them and hurt them badly. This is the thing.

MR. SCANLAN: Do I detect in your remarks some suggestion that maybe your Committee has succumbed to this vast array of forces that they were able to marshal on occasion?

MR. CASE: I wouldn't say that at all. I succumbed to them sometime back in the early or late Forties when His Excellence, Governor William Preston Lane, gave me a chance to sit on a school board. I was

thoroughly brainwashed at that time.

MR. SCANLAN: Based on your experience in fiscal affairs in this State and based further on your experiences in financing education and especially based on the work you have done in the work with your Committee, and an excellent work it is, too, is it not your opinion that the retention of this language as you have it, slightly different, I concede that, the language, for State support of the local system, is merely just to preserve a symbol and nothing that really has any great efficacy?

MR. CASE: Well, that is a hard question to answer. I think that it does preserve a symbol. I will start with that. There is no question about it. This is a great symbol to the public school people, so you have to look at it from the other side. Is there any great damage done to the budgetary system of the State? Is the financial position of the State unduly wounded by reason of the contingency? The reason has to be No.

MR. SCANLAN: If we are going to clutter up

this Constitution with symbols just to assuage pressure groups, we will have a voluminous document, indeed.

THE CHAIRMAN: May I say we are getting into debate. Let's reserve that. Mr. Hoff?

MR. HOFF: There was one further argument made, as I recall, that the complexities of our school system require planning and programming for more than a year ahead, and that a sudden interruption of a school budget or a school program, as set forth, as might take place where this guarantee of at least one year's continuation would be removed, could possibly disrupt seriously the whole school system.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: I would like to ask a question. As I understand it under present law, which would be guaranteed under this Constitution until changed, a minimum expenditure of $340 per student must be made in each jurisdiction?

MR. CASE: That is correct.

MR. MILLER: I also understood you said, and I believe it is true, there has been cooperation, but

suppose with our new plans that we have for local self-government, suppose a jurisdiction refused to raise a reasonable amount. Would there be any safeguard but what the State would have to put it up, whereas another County or another area might raise more than the $340?

MR. CASE: The second part of your question, in fact, happens. There are a number of jurisdictions that do raise more, but the requirement that the State participate in the program is pre-conditioned upon the local political subdivision raising its required amount.

In other words, if they refuse to raise it, then they don't get any State money.

MR. MILLER: Is the amount they are supposed to raise fixed by State law?

MR. CASE: Yes. Well, wait a minute. The method by which they are supposed to raise it is fixed by State law.

MR. MILLER: Suppose they don't put enough tax on the local people?

MR. CASE: Well, the statute provides the amount of tax. It specifies that. It is on Page 16.

If you will look on Page 16 of the Report, Congressman, you will see exactly how it works.

MR. MILLER: I understand that that is the way it works now, but if we have local self-government and the tax is not levied, would the State under this provision still have to go ahead and pay it?

MR. CASE: No, sir. As I understand it, this is a State mandated item. It tells the local political subdivision that it has to raise an amount equal to 1.228 per cent of the sum of its adjusted assessed valuation on real property and its total net taxable ordinary income. Now, it has to raise that amount. If it doesn't raise it, it is out of the program and won't get any State money at all.

THE CHAIRMAN: Mrs. Freedlander?

MR. MILLER: Even if the budget called for it, it wouldn't get it?

MR. CASE: That is correct.

THE CHAIRMAN: Mrs. Freedlander?

MRS. FREEDLANDER: I guess I would be classified in that category that Mr. Case spoke about, the

great groups filled with fervor for education, but I differ with him. I am boring from within. I would like to state in answer to Mr. Scanlan that you have 24 local school systems, local in quotation marks. They say they are local, but they are greatly dependent upon State financing. If you did not have such a provision and anyone got angry about something happening on the local level, that portion of the State delegation would then say, Let's cut it, especially since the schools are, I think, the biggest spender. In expenditures, the schools spend the most, and they would be most vulnerable to cuts where there is such a need for it.

Secondly, State aid also implies State standards, which means that we are raising certain of our Counties to a level which the children should get, but which they may not get if you did not have these mandated provisions.

THE CHAIRMAN: Any further question or comment?

Mr. Sykes?

MR. SYKES: Would the expenditures for teachers' retirement system which are now among the mandated items

be included in your language, State support to local school systems?

MR. CASE: As we construe it, Mr. Sykes, we think it would.

MR. SYKES: I would assume that was the intention?

MR. CASE: It is part of the system of teachers, et cetera, I think the notes would show that.

THE CHAIRMAN: Any further questions?

MRS. BOTHE: I would like to make a comment, that the Finance Committee in making this recommendation is in accord with the recommendation of the Miscellaneous Provisions Committee, which we passed on to them. I think we are delighted that they have acceded to our recommendation and that Mr. Case's respect for tradition is being perpetuated.

THE CHAIRMAN: Any further question or comment?

MR. CASE: We find it hard to disagree with the Miscellaneous Provisions Committee.

MRS. BOTHE: I hope you are here to agree with us when our Report comes up.

MR. CASE: Particularly in view of the charm of its Chairman.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: One question on the budget for the Legislature: Explain to me how that budget is made up. Is it made up by the current session?

MR. CASE: Yes. What happens is that the President of the Senate and the Speaker of the House meet with the budget people sometime early in the fall, and they have a regular form. They are going to have so many doormen and so many telephone operators and so many charwomen, whatever it is, and it is written down and submitted to the budget people and that is it. As a practical matter, and I think it is fair to say this, this budget is really done by the Budget Department, so that, to use Mr. Scanlan's word, another symbol is being preserved. It is the practical way it works.

MR. GENTRY: It does not need the concurrence of the Assembly itself?

MR. CASE: No. The two presiding officers sign the request, and it goes in that way.

THE CHAIRMAN: Any further questions or comment?

JUDGE ADKINS: Should the term, Superior Court, is that the court that has the responsibility for preparing the judicial amendments?

MR. CASE: Yes. It is supposed to dovetail with Judiciary. I think it does.

THE CHAIRMAN: Before we pass on, I would like to clarify something by asking several questions: As I understand Subsection 3, the budgets of the Legislative Department, Judiciary Department and the State support to local schools to be included without change by the Governor are only such parts of those budgets as prescribed by law. In other words, you couldn't by either of these departments increasing the salaries provided by law or provided for provisions required by law, require the Governor to include them in the budget?

MR. CASE: I think the word, required, deserves emphasis here, because I misstated it myself. I said as provided. The word, required, makes your point abundantly clear, I think.

THE CHAIRMAN: I take it, therefore, that this

phrase, State support to local school systems as required by law, would not embrace State support of higher education?

MR. CASE: It does not.

THE CHAIRMAN: But I would take it that under the provisions of Section 2, I guess it is, if the Legislature passed a law providing for a certain program of aid to higher education, then under Subsection 2 the Governor would have to include provision to finance that program in his budget under the next to last sentence of Section 2?

MR. CASE: He would have to put in the program. The Governor wouldhave to put in the program. The Legislature can't think up a program and pass it by themselves, unless by supplemental appropriation act, and then they have to finance the money for it. We come to that later.

THE CHAIRMAN: I don't mean that. I mean for instance in 1965, the Legislature passed a bill providing a certain program for aid to higher education, just as it has for aid to local school systems. Then in preparing the budget for 1967-68, under Subsection 2, the Governor

would have to include an appropriation to carry out that program?

MR. CASE: He would put it in. It wouldn't be a mandated item because it wouldn't fall within the provision of 3.

THE CHAIRMAN: No, but would it fall in this, is my question, would it fall within the provision of the next to last sentence of Section 2, that the budget shall contain an estimate of all appropriations required by this Constitution or by law?

MR. CASE: I think that is probably right. If the Legislature passed an act which they have never done, as far as I know, saying that there shall be appropriated from year to year out of the general funds of the State $10,000 for each of the State supported colleges of higher education -- that is what you are saying?

THE CHAIRMAN: Or a dollar amount per student.

MR. CASE: Or a dollar amount per student, then very obviously it would have to go in.

MRS. FREEDLANDER: I wanted to say some higher education is included in the junior colleges. Isn't that

right?

MR. CASE: I don't want to get into a decision or discussion about what is and what is not higher education, but I will agree with you that junior colleges are included.

THE CHAIRMAN: Any further question or comment?

MR. CLAGETT: Mr. Chairman, do you understand, then, that if the General Assembly made an appropriation for higher education and it then was passed on as part of the budget, that it would be protected from any revision by the Governor? Is that under Section 3?

MR. CASE: No. Subsection 3 does not apply.

MR. CLAGETT: That is the way I would read it, so it would be subject to revision by the Governor in the budget.

MR. CASE: Well, except this: That if the law, and Mr. Eney asked me this question, suppose the Legislature passes a law authorizing and directing the Governor to pay to each institution of higher education $40 times the number of students enrolled in that institution as of the first of September, the Governor has to follow the law.

He can't just ignore it. I think he would go to jail if he did.

THE CHAIRMAN: Does that answer your question, Mr. Clagett?

MR. GLAGETT: I believe it does.

THE CHAIRMAN: Mr. Scanlan?

MR. SCANLAN: Just one more question, Dick. In your Report you mention the fact that experience shows that the funds appropriated for education that have a high degree of reverter, overestimates, is it possible that the presence of the predecessor language, the guarantee that the budget can't be reduced for the public school system, is it possible that this provision of the present Constitution was a contributory factor toward this tendency to overappropriate or overestimate public school funds?

MR. CASE: I don't think so. The reason for the high reversion lies in the simple fact that the Board of Education feels that it can always turn the money back if it has got an excess, but it can't educate a youngster if it doesn't have enough money to do it, if it runs out

of money, and therefore they claim that there is some scientific procedures used here, and I am willing to admit that there are, but they admitted quite candidly at our hearings that they consciously overestimated.

THE CHAIRMAN: Mr. Sykes?

MR. SYKES: I just wanted to get clear, too. Under the current practice, there are a number of controls in practice that the Governor's Budget Department and the Governor through them actually exercise over the school budget? It isn't as if the Executive Department has no power whatsoever.

MR. CASE: That is absolutely correct.

MR. SYKES: Is it also true that there is nothing in the draft of language in the new Constitution that you propose which is intended in any way to curtail the powers that the executive is currently exercising in respect to the school budget?

MR. CASE: No. It is to sharpen those powers and make them a little more definitive, if anything.

THE CHAIRMAN: Any further comment?

MRS. FREEDLANDER: To answer Mr. Scanlan again,

the reversion also occurs because in the estimate of the number of pupils, the 340 remains stationary. It is the number of pupils. Baltimore City has a research department that does an annual census on how many children to be expected but all Counties do not have such research census. That is where the reversion occurs, as to the pupils, not the program.

THE CHAIRMAN: Mr. Haile?

MR. HAILE: I have a question. This says for State support to the local school system. The question is, does this include private schools as well as public?

MR. CASE: It does not.

MR. HAILE: Hadn't we better say local public school systems? That is the question I had. I don't require an answer at this point. I just bring it to your attention.

THE CHAIRMAN: Let me suggest that it is an appropriate time to take a coffee break and maybe Mr. Case and Mr. Sachs can think about that a little.

DR. JENKINS: Wouldn't that be covered as required by law?

THE CHAIRMAN: That is part of the problem. I don't know that that meets Mr. Haile's point.

DR. JENKINS: The law does not provide it.

THE CHAIRMAN: It might. Let's take a ten-minute break.

(At this time a short recess was taken.)

THE CHAIRMAN: Mr. Case, do you want to reply further to Mr. Haile's question?

MR. CASE: Mr. Haile asked whether or not this was intended to apply to purely public schools or would private schools come within the ambit of the language? I answered that it was intended, certainly as always to have been used as a vehicle for financing public schools only. However, and I must confess that for that reason, our Committee did not consider the necessity for inserting the word, public, between the words, local and school. Since our recess, it has occurred to me that probably the language as it is stated is the preferable form because there may indeed -- assuming now it has only applied to public schools in the past -- there may indeed come a time when aid to private schools will be sanctioned by the

courts and at that time the Legislature in its infinite wisdom may wish to include private schools within the particular financing scheme that we have here, and it seems to me that the use of the word, public, would prevent this, and I don't think we are ready to make that judgment now.

THE CHAIRMAN: Mr. Sykes?

MR. SYKES: I would like to know whether you are actually correct in your statement of the effect of this provision. As I read the provision, it deals only with the very limited question of whether the Governor has any revisory power over the budget, and I would assume that the reason why the Governor is to have no power over the public school system is that it is a public system and should be kept as free of political influence as possible. There is nothing in this language as I read it that would prevent the Legislature, by the normal process, prevent the State by the normal process, from aiding private schools, but the question is whether there should be a distinction made as between public and private schools as to how far the Governor as governor is to be hamstrung.

Is there really any implication?

MR. CASE: Let me make this point. There might come a time when the Legislature decided that it would give direct State aid for the transportation of parochial school children for example, and that this should be and the Legislature could say this shall be included in the public school budget. If that were done, and it were passed on and accepted by the courts, they would have to reverse, of course, the opinion of the Court of Appeals, but assuming that this were the case, so transportation to all schools would be a part of the local basic program of education, this would protect the transportation of parochial school children, I mean that expenditure as well as the public schools.

MR. SYKES: If the Legislature wanted to do that, it could provide that appropriations should be made and the Governor would be required to include that under Subsection 2, under the language the Chairman referred to.

MR. CASE: It could if it wanted to set it in a dollar amount rather than work it in the public school program.

MR. SYKES: If the Legislature didn't do that, does the same reason apply to public school systems as applies to private school systems, to prevent the Governor from having the power that he otherwise would have over or in the appropriation procedure? That is the only question I asked. I think the question is a lot narrower than the one you put.

MR. CASE: No question about it because the basic cornerstone or philosophical reason for the thing being to eliminate political pressures would be less likely to flow from the private than from the public school sector, so that the area is constricted.

THE CHAIRMAN: Any further question? Any motion? If not, we move on.

MR. SYKES: I would move, in light of the Answers to the questions and what I think is the real effect of limiting this Section to public schools, which is not to prevent State aid to private schools, I would move that the word, public, be inserted between the words local and schools and I call attention in connection to that to the fact that in the existing Constitution --

THE CHAIRMAN: Just a moment. Is the motion seconded?

MR. SAYRE: Seconded.

MR. SYKES: In the existing Constitution, under Section 11, the language says, and for the public schools, as provided by law. Now, if we are going to in effect carry forward and tidy up the present system, which has worked quite well, I see no reason for working any far-reaching changes and making an unjustifiable limitation on the Governor's power, which goes far beyond anything that has existed heretofore. I feel right strongly about the point.

THE CHAIRMAN: Any further discussion?

Mr. Sayre?

MR. SAYRE: If Mr. Sykes' interpretation is correct, and I understand Mr. Case did not contradict him, in the use of the word, public, here, it would seem to me that the question is whether we want to, in effect, find as to public schools without disallowing additional consideration for private schools. Therefore, I think it would be probably good policy to insert the word, public,

if that type prohibition is desired.

THE CHAIRMAN: Further discussion? Mr. Gentry?

MR. GENTRY: Speaking against the motion, I would fear that to insert the word, public, would give some opportunity for those that argue, if the day comes that aid to private schools would be permissible and would be desirable, it would give some support to the fact that that is disfavored by this Constitution, by reason of the fact that the limitation here would be to private schools and give the Governor only his limited powers in that area, but would allow him further powers with regard to appropriations for private school benefit.

I feel as it now stands without any word in there, it would allow an interpretation to be given to this, in the event that at some future time where it is not permitted now, in the event that time should come, it would be permissible and therefore since it does no harm to leave it as is, I would feel it should be left open in this fashion.

THE CHAIRMAN: Further debate, Mr. Clagett?

MR. CLAGETT: What is the difference between

local and public?

MR. CASE: I just told Mr. Sachs I didn't think it was too much. The word, local, is the word generally used to define a public school system. In all candor, I must answer it that way.

MR. CLAGETT: You would distinguish it from church, private or any other designation?

MR. CASE: I don't distinguish it. I say that it is the word that is most often applied to the schools that are maintained in the Counties and Baltimore City, by the Counties and by Baltimore City.

MR. CLAGETT: I would agree it is a word of art.

DR. BURDETTE: May I ask a question? I would like to get the Chair's clarification of this if possible. Are we voting on whether schools should be public, as against the possibility of allowing public or private, or are we only voting about the power of the Governor to supervise the budget?

THE CHAIRMAN: The latter.

DR. BURDETTE: Is there anything in the Consti-

tution as it now stands to require that schools be public? This would not be in this Article.

THE CHAIRMAN: No, it would not be.

MRS. BOTHE: I call the Commission's attention to a discussion on this subject, recognizing aid to private schools, which is contained in the Miscellaneous Provisions Committee's report on education. We recommend that no reference be made in the Constitution to private schools, not without taking a position as to whether or not the Legislature should appropriate funds for that purpose, but we felt that the Constitution was a document dealing with the public institutions in the State and not with the private, and we recommended that no reference be made in what is now Section 8 of the Constitution to private education, rejecting the proposition that this be done.

Mr. Gentry, who is on the Committee, was a minority view in that respect, and I would feel it consistent if the word, local school system, does mean public schools, and I thought it did when I read it, but if it doesn't mean that, I think the addition of the word, public,

would be consistent with our recommendations otherwise. I wonder whether it is not a moot addition.

THE CHAIRMAN: Any further debate?

Mr. Gentry, you have already spoken.

Mr. Scanlan?

MR. SCANLAN: I have the gravest reservations about raising the local public school systems of the State to the co-equal status from the point of budgetary equality with the Judiciary and Legislature, but I defer to the judgment of the Committee on that point. If we are going to do that, for heaven's sake, let's keep it as far on a category as possible by adopting the amendment using the word, public, to precede the word, school.

THE CHAIRMAN: Any further discussion? Mrs. Freedlander?

MRS. FREEDLANDER: I hesitate to disagree with Mr. Case on this question of State versus local, but I think of the word local as referring to a locality, as contrasted with the word, State, rather than local, meaning public. Furthermore, thereis independent school

system in Maryland which also has local schools under independent school systems, as there is parochial school systems with local school systems. I think of local as contrasted to the word, State, rather than as synonymous with the word, public.

THE CHAIRMAN: I would think that Mr. Case is right to this extent, at least, that when you use all three words, local school systems, in present day connotation, that this would almost certainly mean a public school, but I think he is also correct that it is entirely possible that in the future, the local subdivision would adopt a system embracing both public and private schools, in which event I think his second comment would be correct, that local school system might then embrace the private system.

MRS. BOTHE: Mr. Chairman?

THE CHAIRMAN: You have already spoken.

MRS. BOTHE: I wasn't going to speak. I was going to propose.

THE CHAIRMAN: There is a motion. Do you want a substitute?

MRS. BOTHE: Yes, strike the word, local, and substitute, public, which is the word used in the present Constitution.

THE CHAIRMAN: Do you accept that, Mr. Sykes?

MRS. SYKES: No, sir. I think it makes a difference.

THE CHAIRMAN: Any further debate or discussion of this motion?

MR. SYKES: May I make a last observation? It is not debate. I think the record ought to show that there is no intention in this motion to do anything which would indicate our feeling of the realtive weights of the arguments for or against State aid to private schools. The motion that I made was intended to have no effect on that problem at all, but was narrowly limited to the question of the powers of the Governor over the budget.

THE CHAIRMAN: Any further discussion? Are you ready for the question? The question arises on the motion to amend Subsection 3 by inserting the word, public, between the words, local and the word, school, in the fifth line of Subsection 3. All in favor of the motion,

please signify by a show of hands.

MR. BROOKS: Twelve.

THE CHAIRMAN: Contrary?

MR. BROOKS: Five.

THE CHAIRMAN: The motion is carried, 12 to 5.

Any further discussion of Subsection 3?

MR. MILLER: Mr. Chairman, I don't want to belabor the subject. I gather my motion may not even be seconded, but I share some concern. I can understand why the Governor's hands should be tied as far as doing away with the other two coordinate branches of the Government, but I don't see a need, in spite of what the Committee says, in the Constitution for this making as Mr. Scanlan says, of broad power in the State. I would therefore move that we strike from Section 3, beginning on Line 4, and for State support to local school systems as required by law.

THE CHAIRMAN: Is there a second?

MR. SCANLAN: I will second the motion.

THE CHAIRMAN: Do you wish to speak further, Mr. Miller?

MR. MILLER: I think it has all been talked about. I just want it on the record.

THE CHAIRMAN: Any further discussion? Are you ready for the question?

MR. SAYRE: Could Mr. Miller speak about ten seconds longer on this? It is from the bottom line --

THE CHAIRMAN: His motion is to strike the phrase, beginning in the fifth line of Section 3, and for State support to public local school systems, as required by law. Any further question? Is there any further debate? Are you ready for the question? All those in favor of the motion, signify by saying Aye, contrary, No. The Noes seem to have it. The Noes have it. Any further question on Subsection 3? If not, we move to Subsection 4.

MR. CASE: Subsection 4 is very largely procedural and deals now with the budget bill for the first time. The first two sentences are virtually, are copied, as a matter of fact, from the first sentence of Subsection 5 of present Section 52 and I shall read those two sentences. The Governor shall deliver to the presiding officer of

each house the budget and the bill for all the proposed appropriations of the budget classified and in such form and detail as he shall determine or as may be prescribed by law. The presiding officer of each house shall promptly cause said bill to be introduced therein, and such bill shall be known as the budget bill.

That is the way procedurally the budget bill sees the light of day in the General Assembly.

The next sentence says, The Governor may, before final action thereon by the General Assembly, amend or supplement the budget bill to correct an oversight, to provide funds contingent on passage of pending legislation or to provide for an emergency.

This sentence again is taken from the existing Constitution and is the authority that gives to the Governor the right to send down supplemental appropriation bills. This is a useful tool because it ofttimes happens that programs are initiated in the General Assembly which will become effective on June 1 of the same year, and it is necessary to find funds to do this. These programs not being known when the budget is first assembled by the

Governor, he necessarily has to in some way amend the budget to provide for these particular new programs. In addition, there are certain instances where there could be an oversight in the preparation of the initial budget and budget bill and this provision affords the opportunity to correct the oversight.

I might say that the permission to the Governor to send down supplemental appropriation bills has been criticized in the past by certain writers and commentators on the subject on the theory that it is in effect, a pork barreling kind of operation, and that late in the session the Governor is able to send to the General Assembly pet schemes which legislators have worked on for their own constituency, and that way votes can be obtained, et cetera, and indeed, the Sobeloff Commission made an effort to restrict the use of the supplemental appropriation bill, or the amendment really, what we are talking about, the amendment by the Governor to the budget.

Our Committee discussed this with all the parties involved that we thought ought be talked to, and we found that the power in the Governor to amend ought to

be preserved but we did include a safeguard, which I will mention in a minute, that is not found in the present Constitution to ameliorate the objections which have been directed toward this particular provision.

The fourth sentence in the Section merely describes the amendment, it says what happens to it, such amendment or supplement shall be delivered to the presiding officers of both houses, and it shall thereafter become a part of such budget bill as an addition, substitute, or modification thereof or any item thereof, and of course, being part of the budget bill it must conform to the already announced plans of balancing, which is important, because if the funds stated in the budget and budget bill as originally sent down do not provide funds for this new or additional program, then this supplement must do so to keep the balancing system in effect.

The last sentence in proposed Section 4 is new: Any such amendment shall be accompanied by a statement by the Governor explaining the reasons for each budget amendment.

In the current Constitution, there is a provision

permitting, and that is about all you can say for it, the Governor, in the course of sending down his budget, to send down with his budget, a budget message and of course, this, as most of you know, is done. Not only is there a very detailed message, but the Governor makes a State of the State speech, which is, in effect, a summarization of the budget.

We didn't include anything in our draft on this particular point because we felt that this was a prerogative of the Governor and to say in the Constitution that he could do it was merely declaratory of his inherent powers as the Chief Executive Officer of the State. When it comes to the supplements or amendments, we felt that here there ought to be a spotlight cast on it, because the Governor is doing something perhaps as an afterthought, and therefore, based on the underlying philosophy, if not the direct recommendation of the Sobeloff Commission, because we felt that their way of getting at it was not proper, namely, to eliminate the right to amend, we preserved the right to amend, but required the Governor to say just what he is doing so the Legislature can tell

what he is doing and can act on it accordingly.

THE CHAIRMAN: Any questions?

Mr. Sykes?

MR. SYKES: Shouldn't the statement that is required by the last sentence be a written statement so it is right there in the Legislature and can be referred to? I assume that is what is meant anyway. I am not clear.

MR. CASE: Certainly, it would have to be a statement, which would be conveyed to all Members, and I suppose it couldn't be done other than by writing.

MR. SYKES: He could make it at a press conference or he could tell the President of the Senate.

MR. CASE: This means a statement to the General Assembly.

THE CHAIRMAN: It would hardly accompany the amendment if it were done in a press conference.

MR. SYKES: Is it intended that it be a written statement?

MR. CASE: In all candor, yes.

THE CHAIRMAN: Any further comment? Questions?

Do you have anything further, Mr. Sykes?

MR. SYKES: No, sir.

THE CHAIRMAN: The next Subsection, 5.

MR. CASE: We have talked up to this point about what the Governor can do and emphasized the effect of the so-called strong executive type budget, which we are dealing with here. Now, we transfer the scope of our inquiry to what the General Assembly can do once the budget bill has been introduced and is before them for passage. Section 5 deals with that subject.

The General Assembly shall not amend the budget or the budget bill so as to affect (a) the estimate of revenues therein contained; (b) the appropriation of sufficient funds to provide for the timely payment of the interest upon and installments of principal of all indebtedness created on behalf of the State as required by Section 34 of Article 3 of the Constitution; (c) the provisions made by the laws of the State for the establishment and maintenance of a system of public schools.

I call your attention to the word, public, which is why I didn't speak against in other propositions

because it dovetails. It does mean public.

All right. Now, getting back to this sentence, because there is one innovation in it, one innovation of substance and one of language. The one of substance is to be found in the (a) on Page 23. In the present Constitution, there is no provision which would deny to the Legislature the right to amend the revenue estimates which are made by the Governor, and when Mr. Sachs and I mentioned this fact to Mr. Rennie and Mr. Slicher, they were horrified to know that the General Assembly could indeed, if they took it upon themselves, perhaps could, amend the estimate of revenues. This is a very important thing, because if you can amend the revenue estimates, if you could possibly amend them upward, then you could get in programs that the Governor desired, never envisioned, perhaps, and there is no telling what kind of chaos would come out of it, so we are proposing that the Governor, who has the responsibility of revising the budget and the responsibility of finding money to fund that budget, for sure has the responsibility of determining the revenue estimates, and we think that his estimate of revenues should

be inviolate and that is the reason for (a).

MR. SCANLAN: I have a question on that. Do any other States have in their Constitutions a prohibition on the right of the representatives of the people to raise the revenue estimates of the co-equal branch of the Government, namely the Executive?

MR. CASE: To do --

MR. SCANLAN: Does any other State --

MR. CASE: -- have a similar provision?

MR. SCANLAN: Or similar restriction.

MR. CASE: I would guess they do.

MR. SCANLAN: It strikes me as highly unusual. The Governor can be wrong and the Legislature could be right.

MR. CASE: But it is the responsibility of the Governor, and this is the cardinal issue, the responsibility of the Governor to do it, right or wrong.

MR. SCANLAN: I guess we are getting into argument.

THE CHAIRMAN: Mr. Sykes?

MR. SYKES: Is the word, a-f-f-e-c-t, in that connection possibly broader than the Committee

intends? I can see so far as revenues in the budget that the Legislature should probably not be allowed to increase them at least. I don't know that it makes that much difference whether it decreases them, but in any case, it is acting directly on the revenue estimates. I don't know enough about budgeting to know whether some other things that the Legislature might be doing might be said to affect the revenue estimates.

MR. CASE: You get into words and semantics here. That word is now found in Subsection 6 of --

MR. SYKES: Not in connection with the new thing you have added. My question is, how this integrates with the existing language.

MR. CASE: I thought it did.

THE CHAIRMAN: I had the same question, not as to A but as to C, and I wondered if you could accomplish everything you wanted by using the word, change, instead of affect.

MR. CASE: Actually as far as C is concerned, that is a direct takeoff from present Subsection 6, which uses the word, affect, and uses the word, public schools.

THE CHAIRMAN: I know that, but my concern was whether or not the thing you mentioned in connection with the earlier Section you may have provisions by the law of the State with respect to the establishment and maintenance o the system of public schools which does not provide for mandated items, and nevertheless, it is a provision of law and if you say that they can't amend the bill so as to affect it, they maybe couldn't reduce some appropriation for the schools other than a mandated item that could be said to affect the system.

MR. CASE: This is only dealing with the budget and budget bill. It doesn't deal with some other law.

THE CHAIRMAN: That is true. I am wondering whether it would impose too great a limitation on the power of the Legislature to reduce items in the budget bill on the ground that they could be said to affect the provisions made with respect to these others. Is what you really mean, change?

MR. CASE: I mean what the fellow who wrote Subsection 6 meant, I guess.

MR. SYKES: You don't mean, change, in B, I don't think. There, I think you do mean affect, but you

do mean change in A and C.

MR. CASE: I would personally feel that the word, affect, having been in the Constitution and been the subject of at least administrative interpretation, ought to be the one to remain. We know what it means; maybe not as a purist in the English language, we know what it means, but we know as a practical working day matter what it means.

MR. MILLER: Would the word, increase, accomplish the goal instead of just say, affect, or change?

MR. CASE: No. If you said, increase, by hypothesis you could decrease.

MR. MILLER: Would there be any objection if they wanted to?

MR. CASE: Absolutely. That is the heart of this provision, it can't be changed.

THE CHAIRMAN: Any further question?

Mr. Sykes?

MR. SYKES: I wanted to make a motion.

THE CHAIRMAN: Let's get the questions first.

MR. CLAGETT: Mr. Chairman, assuming for the

moment that a County appropriated, or made provision for appropriation for private schools and persuaded the Governor to include that in the budget bill, and then the Legislature wanted to regulate that amount or to prohibit it, it would not be able to do so, would it?

MR. CASE: In the first place, a County can't put anything in the Governor's budget by local appropriation.

MR. CLAGETT: I realize that, but assuming that they persuaded the Governor to include it. Then they would get away from the effect or any effect that the Assembly could exercise over them.

MR. CASE: No. I don't follow the question.

THE CHAIRMAN: I would think, Mr. Clagett, that the phrase, laws of the State, means laws passed by the Legislature and not local laws passed by a political subdivision. In other words, as I understand Paragraph C, the restriction on the Legislature there is to tie its hands only to the extent that it has already tied its own hands.

MR. CASE: I might also say, Mr. Chairman, that

by construction, this, of course, refers to the last clause in Section 3. I mean it refers to the same thing.

THE CHAIRMAN: Further questions?

Mr. Haile?

MR. HAILE: For the record, answering the question of Mr. Scanlan of whether this provision appears in any other State Constitutions, it does appear in the Charter of the Baltimore County Government, and it has been our experience that it is a very helpful provision. Mr. Donoho worked on that, and I believe he advised this Committee. He finds it very satisfactory and very useful.

THE CHAIRMAN: Any other questions? Proceed with the consideration of this Section. Hold your motion until we conclude consideration of the Section, Mr. Sykes.

MR. CASE: The next sentence says, The General Assembly may amend the bill, the budget bill, of course, by increasing or decreasing the items therein relating to the General Assembly.

That is a verbatim of the present constitutional provision. It may increase the items there in relating to the Judiciary. The same thing is true.

The salary or compensation of any public officer shall not be decreased during his term of office. That also is contained in the existing provisions. Except as herein provided, the General Assembly shall not alter the budget bill except to strike out or reduce items therein. That is included in the present existing Constitution.

THE CHAIRMAN: Any questions, Mr. Haile?

MR. HAILE: This Section starts off, The General Assembly shall not amend the budget or the budget bill. In this last sentence, I see a difference. As a matter of fact, the budget is not before the Legislature.

MR. CASE: The reason the budget was put in there in the first instance was to make it abundantly clear that the estimate of revenues which does appear in the budget but not in the budget bill could not be amended. The revenue estimates do not appear in the budget bill. They appear in the budget only. That is the reason the words budget were put in the first sentence. They do not, you are perfectly correct, they do not apply to the last three sentences of the Section.

MR. HAILE: In effect, this last sentence says to amend, or to strike out or reduce items. That refers to items in the budget, does it not?

MR. CASE: Budget bill.

THE CHAIRMAN: The sentence uses the word budget bill.

MR. HAILE: Yes, but I thought we changed the budget bill to one for programs and eliminated the items from the budget bill. That is my question. That is where the confusion is.

MR. CASE: No. The budget and budget bill both go forward on a program basis.

MR. HAILE: This means items of the program then, of the nature of a program, lump sum, yes.

MR. CASE: Yes.

THE CHAIRMAN: Mrs. Bothe?

MRS. BOTHE: I am somewhat confused as to how the General Assembly might increase the revenue estimates. There is no bill before them, I gather, and it is an executive function to make the estimate. I don't understand by what procedure the General Assembly does this.

MR. CASE: They might pass a joint resolution.

MRS. BOTHE: Would that have the effect of actually --

MR. CASE: That has the effect of law. That is a simple way to do it.

THE CHAIRMAN: The only real effect of that would be to permit them to increase the only items they can increase, namely the legislative?

MR. CASE: That is right.

THE CHAIRMAN: But would permit them to do that and still say they had a balanced budget.

Mr. Scanlan?

MR. SCANLAN: Other States, directing your attention to the very last sentence, except as herein provided, the General Assembly shall not alter the budget bill except to strike out or reduce items, do other States have restrictions on the power of the representatives of the people to increase the budget bill or the budget?

MR. CASE: I can answer that one. About 40 per cent of the States have this provision; about 60 per

per cent permit them to go either way. When Mr. Donaho, who was a consultant to the Sobeloff Commission, consultant to Baltimore County and many of our Counties, and Mr. Walter Haile just spoke about him, when he came before our Commission, he said, and I think this is interesting on the subject, that when he first came to Maryland, he felt that the General Assembly or the elected people should have the right to go either way, but after working with this for a number of years, and dealing with it and seeing how it works, he was converted and felt that it was the better of the two systems, and I think he said that Governor Smiley in Washington State --

MR. SCANLAN: Idaho.

MR. CASE: Well, it is the one in Washington, that is where it was, they changed their Constitution, and he told me this as an aside, to bring this into his recommendation under Maryland practice.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: The Judiciary submits its own budget. Could they reduce salaries of some judges?

MR. CASE: No, they couldn't reduce. The

salaries of the judges which were fixed in the act are mandated items, and this is the same as the school budget.

MR. GENTRY: Even the Judiciary itself?

MR. CASE: It would not be subject to reduction.

MR. MINDEL: What about employees other than judges in the judicial system?

MR. CASE: We had quite a long discussion with Mr. Martineau, Mr. Invernize, Mr. Sachs and myself on this subject this week. If you have an employee whose salary was not specified as such by law, then the Governor would have a right to change that. He does change it now. As a matter of fact, the Governor goes over all of the nonmandated items and makes changes in them. The Governor and the Legislature would have a right to change it. I might say that Mr. Martineau, I don't want to speak for him, he is not here, but Mr. Sachs can correct my impression if I am wrong about this. After completely explaining to Mr. Martineau and to Mr. Invernize how this system would work with respect to the Judiciary, he was completely satisfied.

THE CHAIRMAN: He so advised me also. Any

further questions?

Mr. Sayre?

MR. SAYRE: I just want to be sure I understand this last sentence. Number one, confining ourselves to the budget bill only, I am asking the questions on this, this does not then prevent the Legislature having or initiating a supplemental bill to increase?

MR. CASE: Hold that. That comes later. That is not involved here.

MR. SAYRE: All right. We will cross that one out. This does not prevent the Governor later from initiating a supplemental bill if he has something cut he feels strongly about?

MR. CASE: If it is an amendment, we have dealt with that in the last Section.

MR. SYKES: Relating this to striking out so he couldn't initiate that later in a supplemental bill?

MR. CASE: He can send down a supplemental appropriation bill. We have dealt with that.

MR. SYKES: Clarifying my understanding. Now, the main effect of this, is it not, is to prevent an

across-the-board percentage cut?

MR. CASE: I am sorry --

MR. SYKES: The main effect of this requirement, the Legislature can only strike by item, is to prevent their having an across-the-board percentage cut in the budget, isn't that correct?

THE CHAIRMAN: I think you have misread the sentence, Mr. Sayre, on the basis of your last comment.

MR. SAYRE: The way I read it is that the General Assembly can only alter by reducing by item, is that correct?

THE CHAIRMAN: I will ask Mr. Case to answer. I would not have supposed that that sentence would prevent the Legislature from applying a percentage reduction to every item in the budget.

MR. SAYRE: I would interpret that and I would say that is highly desirable, but I want to be sure that is the proper interpretation.

THE CHAIRMAN: Mr. Case?

MR. CASE: As I interpret it, it would permit the General Assembly to make any item that it saw fit,

reduce it, strike it out, strike them all out, strike them out halfway or anything you want to do as long as it is down.

MR. SAYRE: As long as it is named?

THE CHAIRMAN: No.

MR. SAYRE: Do you see what I am saying, for the Legislature to alter or strike, it has to pinpoint what it is going to remove.

MR. CASE: It necessarily does that. It is the only way you can strike it out, is by amending it.

MR. SAYRE: You can say we don't like it, we will have a 10 per cent reduction of the budget, without any itemization. That is what I assume this prohibits.

MR. CASE: If it was going to do that, every item would have to be struck and a new item put in because you have got to amend -- the bill is a law just like any other law. If you don't want it to mean a hundred dollars, but you want to make it mean ninety dollars, you have got to put a line through the hundred and say ninety, right below.

MR. SAYRE: When I say item, I mean by program.

I don't mean by pencil, but you have to specify the program.

MR. CASE: You have to amend the particular section of the bill that you are dealing with.

MR. SAYRE: So I do interpret this properly. You cannot have a blanket reduction.

THE CHAIRMAN: Mr. Sayre, I think you are not following Mr. Case. What he is saying to you is that if the Legislature wants to put through a 10 per cent reduction in the budget, they can accomplish that by reducing the number for each program, each item in the budget by 10 per cent.

MR. SAYRE: Yes, but they have to name the program, the item.

THE CHAIRMAN: You have to amend the bill. The bill is made up of a lot of items. There is only one way to amend it.

MR. SAYRE: I just want to be sure that I interpret this to not be a blanket reduction.

THE CHAIRMAN: I don't agree with your last statement. It is a matter of semantics.

MR. CASE: I think so.

MR. SAYRE: No. This is a real problem. This, I think, is one of the most important Articles in the Constitution, and I just want to be sure that the Legislature is going to be responsible by item reduction, which I interpret this to mean.

MR. CLAGETT: Putting it a little bit differently, a blanket reduction can be accomplished if you list all the items.

MR. SAYRE: Exactly, but there you put the Legislature on the spot.

MR. CASE: Everybody is saying the same thing.

THE CHAIRMAN: I think so. Any further questions?

MR. SAYRE: Okay.

THE CHAIRMAN: Any further questions on this Section?

Mr. Mindel?

MR. MINDEL: Dick, does the budget bill always coincide with the budget or are there any changes before the budget bill is made up?

MR. CASE: The budget bill is taken from the budget.

MR. MINDEL: They coincide?

MR. CASE: Yes.

MR. SCANLAN: I have a motion.

THE CHAIRMAN: There are further questions.

Mr. Mindel?

MR. MINDEL: Mr. Chairman, I am concerned about the language of the last sentence, the last phrase, except to strike out or reduce items therein. It just seems to me that that overrides everything that is in that Section.

THE CHAIRMAN: What about the first phrase, except as herein provided?

MR. MINDEL: I understand. I am worried about the last phrase. It seems to me that that overrides everything that comes ahead.

THE CHAIRMAN: I am not sure I follow you.

MR. CASE: I don't follow it either. The words, except as herein provided, is intended to do exactly that, except the provisions above it.

THE CHAIRMAN: Mr. Haile?

MR. HAILE: I would like to ask this question: After the Legislature reduces an item in the budget, I assume that means that then the Executive branch determines at a later date what part of that program they will have to eliminate, and the Legislature cannot specify what part of the program they intended to have eliminated?

MR. CASE: That is essentially correct. There are so many dollars to do the program. You have got to do the best you can with them.

MR. HAILE: So the Legislature cuts the lump sum, and then the Executive --

THE CHAIRMAN: Decides whether it is pencils or people.

MR. HAILE: That is the way it is in Baltimore County. I wish there were some clearer way to make that expressed in here.

THE CHAIRMAN: Any further questions?

DR. BURDETTE: Are you now saying that the Legislature can simply say, This thing has to be cut, by a hundred thousand dollars, and the Governor can figure

it out?

MR. CASE: No, sir.

DR. BURDETTE: Do you want to do that, Mr. Haile?

MR. HAILE: That is what we do in Baltimore County.

DR. BURDETTE: I thought we agreed a few minutes ago this couldn't be done?

THE CHAIRMAN: I think the difficulty is that Mr. Haile is talking about specific items. Mr. Sayre was talking about the entire budget. As Mr. Case pointed out, the budget bill is made up of a series of items. Each item is a program. If the Item 10 in the budget bill is a million dollars for XYZ program, the Legislature cuts it to nine hundred thousand dollars, I take it, then, that the executive has to decide whether he has less pencils or less people.

MR. CLAGETT: Mr. Chairman, I believe Mr. Mitchell has got a point here insofar as the reading of this double exception. If you read this sentence, the General Assembly shall not alter the budget bill, except

as herein provided, except to strike out or reduce items therein, you have got a different meaning.

THE CHAIRMAN: You are not getting through to me. Did you follow him, Mr. Case?

MR. CASE: No, sir.

THE CHAIRMAN: Do it again.

MR. CLAGETT: If you read this sentence, the General Assembly shall not alter the budget bill, except as herein provided, except to strike out or reduce items therein, it means that you can strike out or reduce the items which would, in effect, be an amending. I am transposing a sentence.

THE CHAIRMAN: You can strike out or reduce the items. That is the whole point of it.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: I think it is awkward because of the two exceptions. I see what Hal is driving at. Maybe this would work, except as provided here in the General Assembly may alter the budget bill only by striking out or reducing items therein.

MR. CLAGETT: Exactly.

MR. GENTRY: That would cure this double exception.

MR. CASE: If I may say this, everybody knows what this is supposed to mean. I would suggest this is a matter for the Committee on Style.

THE CHAIRMAN: We will leave it that way.

Any further question on this Section before we get the motion?

I have a question, and I just don't know the answer offhand. I am not sure of it. Is this provision, salary or compensation of any public officer shall not be decreased during his term of office, elsewhere in one of our drafts? Isn't this one of the things your Committee is considering, Mrs. Bothe?

MRS. BOTHE: It is not elsewhere any place as far as I know, Mr. Eney. The Judiciary Committee discussed it with reference to the Judiciary.

THE CHAIRMAN: There is no special provision?

MRS. BOTHE: Not specifically assigned to my Committee.

THE CHAIRMAN: My second question, Mr. Case,

is, is anything added by the words, salary? Could we simply say compensation?

MR. CASE: It is just taken from the existing compensation.

THE CHAIRMAN: I know it is.

MR. CASE: All right, compensation, remuneration.

THE CHAIRMAN: Can we take out the word, salary, or? Any objection, take out salary, or.

Now, in the second or third and fourth lines, you refer to the principle of all indebtedness created on behalf of the State as required by Section 34. In view of the fact that in that Section, which will have a different number eventually, you provide specifically that only what applies with that Section can constitute a State debt, can we use simply the term, debt, here, State debt, instead of the cross reference?

MR. CASE: Indebtedness was used to refer to State debt, as used in that Section, as a word of art.

THE CHAIRMAN: I just wondered whether we could avoid the cross reference, which is just one of the things

to remember to pick up.

MR. CASE: The idea is, of course, that this is a State debt as defined.

THE CHAIRMAN: Can we leave that to the Committee on Style?

MR. CASE: Yes, sir.

THE CHAIRMAN: It does not bother you?

MR. CASE: No.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: Mr. Chairman, getting back to your first point, I don't think there is any argument about substitute, but we have elsewhere in the Constitution that certain salaries can't be reduced. It doesn't seem to me, it is the appropriation for salaries we are talking about here rather than the right, going into detail, of who is an employee and who is an officer. I would think that the Committee on Style could work that out a little better, so it doesn't look like we are legislating out of place.

THE CHAIRMAN: All right. We will check that. Any further questions? If not, Mr. Sykes, do you want to

make a motion?

MR. SYKES: Yes. I move we amend the first sentence of Subsection 5 to read, The General Assembly shall not amend the budget or the budget bill so as to change the estimate of revenues therein contained, or affect, (a) the appropriation of sufficient funds to provide for the timely payment of the interest upon and installments and principal of all indebtedness, and so on, or, (b) the provisions made by the laws of the State for the establishment and maintenance of the system of public schools.

THE CHAIRMAN: Is there a second?

MR. MITCHELL: Second.

THE CHAIRMAN: Mr. Mitchell seconds. Mr. Sykes?

MR. SYKES: My reason for that is that I want to preserve the word affect in connection with the two items withwhich it is used in the amendment because it carries over existing constitutional provisions which have worked well enough. With regard to the item on the estimate of revenues, this is a new item not in existing law, and I am afraid the use of the word, affect, which

was perfectly appropriate for the things that it covered in the existing Constitution, is too broad and may have unintended consequences as to this new matter, and the change that we are effecting should be limited to changes directly in the estimate of revenue.

THE CHAIRMAN: Mr. Case?

MR. CASE: We have no objection to that.

THE CHAIRMAN: Mr. Mindel?

MR. MINDEL: Does the estimate of revenues appear only in the budget and not the budget bill?

MR. CASE: Budget.

MR. MINDEL: In that case, I would like to make a motion.

MR. CASE: It could appear in the budget bill, but as a practical matter it never has.

MR. MINDEL: The General Assembly shall not amend the budget so as to alter or change the estimate of revenues therein contained or amend the budget bill so as to affect (b) and (c) that we had there.

MR. CASE: May I speak to that?

THE CHAIRMAN: Mr. Sykes, do you accept the

amendment?

MR. SYKES: No, sir.

THE CHAIRMAN: Do you want to make a motion to amend the motion?

MR. MINDEL: No.

THE CHAIRMAN: Any further discussion of the motion? Are you ready for the question?

MR. SAYRE: Does Mr. Case have a comment on that?

THE CHAIRMAN: Mr. Case said he had no objection. Are you ready for the question? The question arises on the motion to amend Subsection 5 so that the first sentence will read, the General Assembly shall not amend the budget or the budget bill so as to change the estimate of revenues therein contained, or so as to affect, and then follow with (b) and (b).

MR. SYKES: Renumbered (a) and (b)?

THE CHAIRMAN: Which will be relettered (a) and (b). Are you ready for the question? All those in favor, signify by saying Aye; Contrary, No. The Ayes have it. It is so ordered.

Mr. Scanlan, you had a motion?

MR. SCANLAN: Yes. I move that we delete the last sentence of the proposed Subsection 5.

THE CHAIRMAN: Is there a second? Is there any second? The motion fails for want of a second. Any further discussion or motions with respect to Subsection 5? If not, we will proceed to consider Section 6.

MR. CASE: Section 6 incorporates something that is entirely new, and I think the Commission in a similar situation has been faced with this problem before, and has responded, and the solution that you find in Section 6 to the problem I am now going to state is somewhat analogous to the solution the Commission has already made in this other area, and I believe you will see what I am talking about when I get into it.

The problem here is the fact that the Constitution has always provided that no appropriation bill, money bill, as they are called in the General Assembly, can move until the budget has been finally passed, and it was for this reason, say some, that the Cooper-Hughes tax reform measure was blocked in the General Assembly

for such a long period of time this last session, namely, and the reason was, or it is claimed that the reason was that the General Assembly just didn't act on the budget soon enough to permit the General Assembly to then take up other money bills.

Our Committee went into this matter in great depth and discussed it with not only legislative leaders but people, budget people, the Governor and others, and in addition to the consultants and experts that appeared at our day-long hearing, and with the exception of one or two, and these were mine, the unanimity of opinion was that the provision in the Constitution requiring the budget bill to become law first before other money bills move is a salutary provision and should be preserved. It was felt by practically everybody that this was a very vital safeguard, permitting the Legislature to see just where it is on the principal appropriations of State revenues before they get into frolics, problems of their own or somebody else's problems.

We also learned that, as a matter of fact, the General Assembly probably could and in fact should act

sooner than it does on the budget. The witnesses all said, including the legislative leaders, that too much time was spent on minutia on whether or not Crownsville should have four secretaries or five secretaries, and so on and so forth, and that really if the Members of the General Assembly got down to viewing the situation program by program, and weighing needs against proposed programs, that they could come to grips with the budget and make solutions with respect to it in a lot earlier time than is actually done at the present; so we had these two counterbalance philosophies to work out, and the solution that the Committee came up with, in substance, is this: That the Governor presents a well thought out, coordinated budget, showing revenues, estimated revenues and disbursements and a budget bill appropriating the disbursements. Presumptively, he has spent a lot of time on this. He has had a lot of experts working on it. The reason to have the Legislature review it and pass it into law is the obvious check and balance in our own system of government.

If the Legislature is going to dillydally around and slow down the process of all other governmental functions dealing with money, the money bills, by dragging

its feet on the budget, this was necessarily not a desirable thing, so the Committee decided to introduce this present provision, that says, in effect, that if the General Assembly hasn't acted within a certain period of time, the time specified in here, if they haven't acted and brought the budget bill out and passed it in some form, any form they want, then it automatically becomes law.

This, as I said, is consistent with the judgment of this Commission on the reapportionment section, which we have already passed, and there as you all recall, we have somewhat a similar thing, where the plan is not acted upon within a certain period of time, it becomes law.

Now, this provision required some refinements, which I will discuss when I come to it, but you will recall that the Governor is given the right to supplement the budget, correct oversights, supply omissions, et cetera. It was felt that in view of the fact that the budget bill could become law by inaction, that it would be wrong to permit the same thing to happen to a supplement, which might go down from the Governor's office the

night before the budget bill would by operation of constitutional mandate become law, so that this automatic provision does not apply to supplements and those supplements then become supplemental appropriation bills, and are transferred to another, or by another section of the Constitution through a little different procedural aspect.

Now, Section 6: The budget bill shall become law when passed by both houses of the General Assembly, which is a declaration of what is now the law and what ordinarily should happen.

If the budget bill shall not have been finally acted upon by the General Assembly within ten (10) days before the expiration of its regular session, it shall become law in the form and tenor of its original introduction; there is the innovation. Ten days is a judgment on the part of the Commission, or the Committee. We felt it was a fair and adequate length of time to permit other vital State business to move through the General Assembly after the budget had become law; but this provision, namely that it shall become law, shall be inapplicable to any amendment to or supplement to the budget bill made

as provided by Subsection 4 of this Section 52. That is the thing I spoke about, where the Governor supplements for oversight or omissions.

In the event the budget bill becomes a law by reason of a failure to act thereon by the General Assembly, any amendments or supplements thereto shall be controlled and governed by Subsection 8 hereof relating to supplementary appropriation bills.

That transfers them to another procedural arena. We will discuss that in a few minutes.

The budget bill, upon becoming a law, shall not be subject to veto by the Governor. That is in the current Constitution. The budget bill is not subject to veto, for obvious reasons.

THE CHAIRMAN: Any questions?

Mr. Sayre?

MR. SAYRE: Suppose the Legislature decided that it couldn't handle all of its problems prior to the ten-day limitation, so on the eleventh day decided to extend by another 30 days after termination. Where does the ten-day rule apply?

MR. CASE: This, of course, was written before the Commission conceived, or before the Commission made that judgment. It would be my feeling that it would be ten days from the regular session and not ten days -- I mean, from the original session and not the extended period.

MR. SAYRE: Shouldn't that be spelled out, then?

MR. CASE: I don't know.

THE CHAIRMAN: Couldn't you accomplish it by simply saying 50 days, that if the bill shall not have been finally acted on by the General Assembly within 50 days after its introduction?

MR. CASE: You could.

the chairman: Would that be acceptable? That would mean ten days before the end of the session, if the Legislature extended.

MR. CASE: You could do it.

MR. GENTRY: What is the figure, 50 or 60?

THE CHAIRMAN: If the bill is not finally acted upon by the General Assembly within 50 days after

its introduction.

MR. GENTRY: Fifty or sixty?

THE CHAIRMAN: The Legislature under the other Section has the right to extend the time for ten days so this could be 60 days after the beginning of the session. Any objection to that change?

MR. MILLER: I think it is an improvement.

THE CHAIRMAN: Let's make that change. Any further questions?

Mrs. Freedlander?

MRS. FREEDLANDER: Mr. Case, it is a rather unique concept in legislative history. Is it working anywhere? Has it ever been tried anywhere else?

MR. CASE: So far as I know, in this area, it is new. We have tested this very carefully with Mr. Rennie and the budget people, and they say it will work, and they hope it becomes part of the law.

THE CHAIRMAN: Mr. Sykes?

MR. SYKES: I have a question about the overall budget provisions in regard to the coordinate branches of Government. I understand with regard to the Judiciary

now that the budget for the Judicial Department is not to be revised by the Governor and that the budget as submitted by the Judicial Department cannot be changed by the Legislature and then can't be vetoed by the Governor.

THE CHAIRMAN: That is not correct.

MR. CASE: Mandated items, only mandated items.

THE CHAIRMAN: They can be increased.

MR. SYKES: I am talking about the Judiciary.

MR. CASE: Yes, which have mandated items, cannot be reduced. They can be increased.

MR. SYKES: Yes. Well, maybe I didn't get it. There are parts of the Judiciary budget that are subject to revision by the Legislature? Is that the intention?

THE CHAIRMAN: By the Governor and the Legislature.

MR. CASE: That is right.

MR. SYKES: I missed that. Then the only mandated items are judges' salaries and that is all.

MR. CASE: Yes.

MR. SYKES: If that is the case --

MR. CASE: Or any other mandated item that the

General Assembly wants to include. It may think the law clerks' salaries ought to be mandated, too.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: Mr. Chairman, this is again a question of wording and ought to go to the Committee on Style, I think, but I find in reading this over, it is quite confusing. On the sixth line of Subsection 6, where it goes on to say, but this provision shall not be applicable, et cetera -- I think that ought to be simplified. As I understand it, it means it doesn't apply at all to anything there, and it will be applied later under Subsection 4. I would like to see if we couldn't get it so it reads a little more intelligibly.

THE CHAIRMAN: All right. That will be considered by the Committee on Style. Any further questions?

Mrs. Bothe?

MRS. BOTHE: Did you get any reaction from legislative leaders on this proposition of the budget bill going through on a time limit?

MR. CASE: I think the idea came originally from the hearing.

THE CHAIRMAN: Before the Committee on the Executive Department.

MRS. BOTHE: I gather there was no objection.

THE CHAIRMAN: I think the Liaison Committee that appeared, by and large they were all in sympathy with it. The only, as I recall the testimony, the only departure from their views from that of the Committee was the feeling that the Legislature ought to be able to consider other appropriation bills, but not finally act on them.

MR. CASE: That is right.

THE CHAIRMAN: That, I think, was the only point on which they differed. Any further questions? I think Mr. Haile had a question, and I passed him by.

MR. HAILE: The provision that the budget will become law if not passed by the Legislature is in our County Charter. It works excellently, excellent provision. We don't have the delays for instance that Baltimore City has, and the embarrassment as a result of it.

THE CHAIRMAN: Any further questions or comments?

Professor Burdette?

DR. BURDETTE: A question. It was commented that for obvious reasons the Governor should not have a veto. I am wondering if the Committee looked into this. It is in the Constitution now. It occurs to me if the Legislature were to reduce the Governor's budget by a very large portion, or began to increase some salaries --

MR. CASE: I can't hear you.

DR. BURDETTE: If the Governor's budget were extensively decreased by the Legislature, this might be very appropriate for the Governor to have a veto. I don't know if it has ever happened. If it did, why shouldn't it require that he do such a thing? I am simply questioning the elimination of the Governor's veto, which I realize is in the old Constitution.

THE CHAIRMAN: Mr. Case?

MR. CASE: Well, the Governor, it is the Governor's budget, and he proposes and the Legislature disposes, I suppose. That is the answer.

DR. BURDETTE: The argument I made is the Governor had a very strong reason, and if they ripped up his budget --

MR. CASE: The trouble with that is as a practical matter, if you would permit -- what you are suggesting is the Governor should have a right to line item veto the budget.

DR. BURDETTE: No. He wouldn't object to it.

MR. CASE: It is just impractical to do it, Dr. Burdette.

THE CHAIRMAN: Mr. Case, isn't one of the real difficulties the timetable?

MR. CASE: That is right.

DR. BURDETTE: I have known States in which it is necessary to call a special session of the Legislature to deal with the budget again because the Governor had vetoed it.

MR. CASE: That is what we want to avoid if we can.

DR. BURDETTE: I don't feel very strongly. What I am a little afraid of, all we have done is copied the old Constitution.

MR. CASE: Everybody that we talked to, Dr. Burdette, in this area felt that this was a salutary

provision. That is why it is continued.

THE CHAIRMAN: Any further questions?

Mr. Sykes?

MR. SYKES: The thing that really bothers me, I guess, is if I can go back to it a moment, because it relates to the one we discussed, it is the language in Section 5 that says, The General Assembly may amend the bill by increasing or decreasing the items therein relating to the General Assembly. It may increase the items therein relating to the Judiciary. When I read that in connection with the subsequent Section, I was confused as to whether it didn't deny the power to reduce items relating to the Judiciary Department. The language itself makes no distinction between mandated and nonmandated items.

THE CHAIRMAN: It denies it to the Legislature but not to the Executive.

MR. SYKES: The previous Section denied it to the Executive.

THE CHAIRMAN: No, sir. Look at it; that is the phrase, required by law.

MR. SYKES: Which Section is that?

MR. CASE: Three, as required by law; that is Page 13.

MR. SYKES: Thank you.

THE CHAIRMAN: Any further question? Any further comment? Are there any motions?

MR. SCANLAN: Mr. Chairman --

THE CHAIRMAN: Mr. Scanlan?

MR. SCANLAN: Again, we may not get a second, but not to stand idly by while the powers of the Executive are cut back and those of the Executive raised, I move that we delete the language in the second line, if the budget bill, et cetera, all the way down to the phrase, appropriation bills, appearing in the next to the last line.

THE CHAIRMAN: I am not sure I follow your motion. Would you state it again?

MR. SCANLAN: I move that we delete from Subsection 6, the language beginning, in the second line, if the budget, and all that comes after that, ending with the words, appropriation bills in the next to the last line

of the Section.

THE CHAIRMAN: You would delete all except the first and last sentences?

MR. SCANLAN: That is correct. I could have stated it that way, I think.

THE CHAIRMAN: Any second? Any discussion?

DR. BURDETTE: I second.

THE CHAIRMAN: Mr. Scanlan?

MR. SCANLAN: I thought that one of the objectives of this Commission was to strengthen all branches of government. Yet, as I have sat here, and I did miss one meeting, I have seen the legislative powers hardly strengthened at all. On the other hand, in the Finance Section today, we see the Governor given a very strong hand, except for a few sacred cows, over the budget. We now see a proposal here where the most important piece of legislature that comes before any representative body, namely, the budget, can become law without their approval by Executive fiat, if they don't get around to the task in time. Previously I objected, but got nowhere on the last Section, when the Legislature's hands are tied.

They can only delete. They can only decrease. They cannot under any circumstances increase the budget, even though a grave emergency or a long emergency of some years duration may be confronting the State. After all, the power of the purse is probably the most important, and it is being eroded away by the type of proposals that the Finance Committee has come in with. This is especially one of the worst. This is an affront to representative government. You pass it within time or it becomes law. The analogy of the reapportionment law doesn't hold at all. That comes up every ten years. That involves a situation where, in effect, you are asking the Legislature to sit in judgment on itself. I don't think it furnishes any precedent for what Mr. Case himself, very candidly, labels an innovation, for which there is no precedent in any State Constitution, whatever may be the case of the Baltimore Charter. On those grounds I move the adoption of the amendment.

THE CHAIRMAN: Any further discussion?

Mr. Sayre?

MR. SAYRE: My original thinking about three

years ago was along the lines of Mr. Scanlan, but the presentation of the budget is of such a nature, when tied in with the reorganizational powers of the Governor, to make it absolutely necessary that you have an operating budget, and then discuss any new programs or the differences of opinion or whatever might be involved in this supplementary bill, the budget bill. It would seem to me that this is a very salutary provision so that the Government itself can continue operating and the Legislature then will have more time to discuss the merits of the programs.

THE CHAIRMAN: Any further discussion?

Mr. Case?

MR. CASE: I merely want to say, leaving completely to one side the fact, with the exception of the school problem, this is the most important cornerstone of our Committee's Report, and therefore, I have some general feeling about hoping the Commission sustains it; Mr. Scanlan, in his remarks, completely in my judgment misses the point when he says that this provision continues to erode away the powers of the Legislature. Quite to

the contrary. This provision intends to and does strengthen those powers, because as it now stands, the Legislature is powerless to act until the money bill passes. This provision will give the Legislature the right to act on other bills after a set period of time. Now what Mr. Scanlan doesn't tell you, and what he should know, and I assume he knows is that there is no such great body as the Legislature when you deal with practicalities. What happens is that a certain few people control the destiny of the budget bill, and if they want the budget bill to move, it moves. If they don't want the budget bill to move, it doesn't move. Therefore, one or two people can control the right of the Legislature to move on other things.

Now, what this will do will weaken the hands of those leaders in holding up the budget bill, force the budget bill to a consideration. If it is not considered, it becomes law, and then the Legislature is free to exercise its prerogatives in the time that remains, a situation that it has never had anything until this time.

THE CHAIRMAN: Mr. Sykes?

MR. SYKES: Is there any possibility that they may be reversed by collusion between these leaders and the Governor if they are on his side, and the budget bill, in effect, kept from consideration of the Legislature so that it may be considered or may become law in its original form? This gives me concern.

MR. CASE: I don't think that is possible.

MR. CLAGETT: It can always be petitioned out.

THE CHAIRMAN: Mr. Case has the floor.

MR. CASE: Under the rules, anything of that nature can be subverted by the usual petition. As a matter of fact, that kind of collusion couldn't be kept from the public view. You would have to have hearings. The pressure here is to get going on the thing, to have hearings immediately, because you have got to do it.

MR. SYKES: Would there be enough delay possible in this type thing in the petition procedure to make hard and fast deadline date impossible to meet and to have the effect of denying regulative consideration to the bill?

MR. CASE: Every Legislature that came before

us said they could move it if they wanted to.

MR. SYKES: Who could move it?

MR. CASE: The General Assembly. For example, the Speaker of the House said there just wasn't any reason for these fellows dillydallying around the way they did, and if a provision such as this were in the law, they would get down and go to work on it.

MR. SYKES: How does that tie in with your statement just a moment ago that a few key people can pretty well control whether the bill is considered or not considered?

MR. CASE: Because what happens is that they hold continuous interminable hearings. It is considered all right, but it is not acted on. What we want is both consideration and action.

THE CHAIRMAN: Mr. Clagett:

MR. CLAGETT: May I point out, to solace Mr. Scanlan's feelings, because he spoke feelingly, that the last sentence avoids a veto by the Governor, so actually it is the act, if they act timely, of the Legislature.

THE CHAIRMAN: Any further discussion? Mr. Scanlan, you may close.

MR. SCANLAN: I would just like to say in answer to Mr. Case's remarks, that at least in my mind, they confirm what I think is the case. Not only Subsection 6, pardon the pun, Dick, not only Subsection 6 but the previous Section, that those Sections are based basically on a distrust, a skepticism about the legislative process, and you just can't pin it on the leaders. Whoever the leaders are, they are the people elected by the, or the representatives of the people to be leaders, and purportedly they represent the membership, and I don't think that tying the hands of the Legislature to the extent that has been done in this provision, this Subsection and in some of the others for future generations, based on what is concededly an innovation, favored primarily by the budget people, who as Mr. Case says, always come out with, quote, well thought out, close quote, budgets, I have known of budget people and executives that have come out with, quote, not well thought out, unquote, budget programs, but I think I am repeating myself when I

move the adopting of the amendment.

THE CHAIRMAN: Are you ready for the question?

MR. SYKES: What is the question?

THE CHAIRMAN: The question arises on the motion to delete from Subsection 6 everything except the first and last sentences. Are you ready for the question? All those in favor of the motion, please signify by a show of hands. Contrary? The motion is lost, 3 to 12.

Before we move on to the next Subsection, we have an arrangement with the hotel to have lunch at one, so we will adjourn.

(Whereupon the meeting adjourned, to reconvene following the luncheon recess.)

CONSTITUTIONAL CONVENTION COMMISSION

AFTERNOON SESSION
October 14, 1966 - 3:30 p.m.
Holiday Inn, Baltimore, Maryland

Appearances as heretofore noted.

Reported by:
C. J. Hunt
and
W. P. Banister

THE CHAIRMAN: May we go ahead now, please?

Page 28, Subsection 7.

MR. CASE: This Section tends to combine in a simplified way provisions of Sections 11, 12 and 7, which appear in the present Constitution, with some modifications, explained in the text. It reads as follows: Either house of the General Assembly may require any person in any department, board, branch, bureau, or agency of the State government to appear and be heard with respect to any budget bill during the consideration thereof, and the Governor or any such person as he shall designate shall have the right to appear for the purpose of explaining the budget bill or any item therein contained.

The present Constitution, as I said a minute ago, has three separate Sections, which attempt to define the rights of the General Assembly, vis-a-vis the Governor in how messages get to the General Assembly, who can appear and what the General Assembly can do by way of requiring people to appear, and we think, the Committee feels that this Section as written in substance covers all

of the existing provisions in the Constitution, and frankly does it better.

One thing is omitted, and I should call your attention to it by way of eliciting some degree of spirited debate from my opposite number over there, the present Constitution in Section 7 provides that the Governor and such representatives of the Executive Department, boards, officers, et cetera, who shall spend State money, shall have the right and when requested by either house of the General Assembly, it shall be their duty, so that the present Constitution required not only department heads to respond to the call of the General Assembly, but also provides in substance that the Governor can be summonsed before the General Assembly to explain his budget. We have removed that Section from the proposed draft and provided only that the department heads, not the Governor -- the Governor should not, we think, be subject to summons by the General Assembly for this purpose.

MRS. FREEDLANDER: Mr. Chairman?

THE CHAIRMAN: Mrs. Freedlander?

MRS. FREEDLANDER: Upon reading this, I wonder,

since these boards, agencies, et cetera, are the creatures of the General Assembly and are maintained through the appropriations by the General Assembly, would this not be an inherent right of the General Assembly to call them? Is it necessary to have this, even though it is in the old Constitution? Wouldn't these people be forced to come anyway?

MR. CASE: They might or they might not. Certainly, they should have the right to appear, which the second part of the Section does, and that is not implicit in anything that we have unless it is given expressly in the Constitution.

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: I can't disqualify the Governor from being a person, and the head of a branch, in the second line of that Subsection.

THE CHAIRMAN: In other words, you are afraid the language is susceptible of including the Governor?

MR. CLAGETT: Exactly.

THE CHAIRMAN: Mr. Case?

MR. CASE: I think that that argument, of course,

could be made, but in the context of the Section here and the notes and the idea that the Constitution presently says the Governor, and we are taking it out, I don't believe that anything would happen to the Governor if he disobeyed a summons by the Legislature. In other words, if you just started fresh, you would probably be right, Hal, but within the context of what we are doing here, I don't believe there would be any question about it.

MR. CLAGETT: You don't think there may be a possibility of a Democratic Assembly and a Republican Governor being at odds and a little harassment might go off?

MR. CASE: I think it is possible. This is to prevent as much harassment as possible.

THE CHAIRMAN: Could you remove any doubt by adding a phrase such as, other than the Governor?

MR. CASE: We just didn't think it was necessary. As I say, in view of the way this is coming up, it would be perfectly clear to anybody who reads it that it is intended to eliminate from the present draft the word, Governor.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: Mr. Chairman, it seems to me that this whole Section, the fact we have had it in the previous Constitution, we are trying to improve and shorten it. I don't see -- we are still discussing giving the Legislative branch the power of subpeona, which I personally feel is necessary. If they could call somebody in on reasonable grounds, why put it in the Constitution, the same thing? As far as the Governor is concerned, as a practical matter, you have had the same thing at the Federal level. The Executive Department isn't going to do anything it doesn't want to do anyway. Nobody can make them do it.

It just seems to me we are building up a lengthy document when it is not adding a thing to it.

THE CHAIRMAN: Any other comment or questions?

Mr. Sayre?

MR. SAYRE: I have the same reservation. I would like to have a little more elaboration on the validity of the Governor to prevent someone in the Executive branch from testifying if he so deems that desirable. You are

saying that is not good policy, this type of division of powers between the Executive, holding persons back from testifying. Is that what you are saying?

MR. CASE: I am sorry, I can't hear you.

MR. SAYRE: If the Governor says, I don't want to testify, I don't want my department head to testify, or my Budget Bureau head or anyone else on something, I don't know what, but if he says he doesn't want the person to testify, he doesn't have to go over the Executive Department, does he?

MR. CASE: Doesn't have to --

MR. SAYRE: He would not have control over the Executive Department if the Legislature wanted to go on a fishing trip every day of their session?

THE CHAIRMAN: You mean under this Section, or under something else?

MR. SAYRE: Under Subsection 7. Isn't that true?

THE CHAIRMAN: Mr. Case, I am not sure I follow, but I think what Mr. Sayre has in mind is that at the Federal level, the Executive has taken the position, as you

know, from time to time, that the doctrine of the separation of powers is such that he can instruct Members of the Executive Department not to testify before Congress. I think Mr. Sayre is asking you whether that would be true as a matter of Maryland law if this Section were not here. Could the Governor say that not only he did not want to appear, but direct any Members of the Executive Department not to appear, and I think that is implicit in Mrs. Freedlander's earlier question also.

MR. CASE: I think he can do it. I don't know what the Legislature could do about it.

THE CHAIRMAN: I take it the purpose of this Section is to make it clear as a matter of Maryland constitutional law that that should not be the case.

MR. CASE: That is right, that they have the right to call them.

THE CHAIRMAN: Is that your question, Mr. Sayre?

MR. SAYRE: Yes. Therefore, I have reservations about the length to which this goes, and I don't think it is clear that you couldn't even subpoena the Governor. I think your comment should at least be, other than the Governor, inserted there, or something. It

would seem to me that the Governor ought to have some control over using his people so that he can get the job of government done in the event that the Legislature wanted to constantly have someone testifying before it. Suppose that the Comptroller was asked to testify every day of the session and that Comptroller is needed in the Executive Department? Just suppose that. How would you prevent that under this Article?

MR. CASE: I don't suppose you would.

MR. SAYRE: Don't you think you ought to have some provision?

MR. CASE: I don't know how you can limit it and make it meaningful.

MR. SAYRE: I think that is the problem. Therefore which is the worse evil?

THE CHAIRMAN: I take it that the Committee feels that it would be a worse evil not to have the Legislature have the right to require the personnel to appear. Otherwise, they wouldn't have recommended this.

MRS. BOTHE: This is not departure from present constitutional law, as I understand Section 7. The

Legislature now has the power to request.

MR. CASE: That is right.

MRS. BOTHE: This capsulizes.

MR. CASE: Combines three Sections into one, that is all it does, and leaves the Governor out as a person who can be required to appear.

MRS. BOTHE: Has the Governor ever been required to appear against his wishes?

MR. CASE: Not to my knowledge.

THE CHAIRMAN: Dr. Burdette?

DR. BURDETTE: I think it does something else. I believe I am for it. It seems to me that the old Constitution gives not only to the Governor, but major department heads, the right to go to the Legislature. The Committee's draft does not give those department heads the right, save as they are designated by the Governor.

I think that may be a good thing, but I presume that has been considered by the Committee.

MR. CASE: That is correct. That was considered and written to cover that point.

THE CHAIRMAN: Dr. Jenkins?

DR. JENKINS: As a Member of the Committee, I felt this was in a practical sense superfluous, but I deferred to the legal minds on the Committee. I still do not conceive that it would be a practical difficulty with the budget, and this is related only to budget, for the Legislature or the General Assembly to have anyone come in to defend a budget item. I really feel this is superfluous, but there may be some legal connotations here of which I am not aware.

JUDGE ADKINS: They have a pretty strong sanction if they fail to appear. They simply don't pass that item in the budget. That is pretty apt to make a department head appear when requested.

THE CHAIRMAN: Any other comments or questions?

Mr. Sayre?

MR. SAYRE: I have reservations on this. I would like to move that some form of limitation on the scope of this legislative power be considered and that it be submitted back to the Committee for redrafting.

THE CHAIRMAN: Is there a second? Any second? The motion fails for want of a second.

Mr. Miller?

MR. MILLER: I would just make a motion that the entire Section 7 be eliminated. I don't think it adds anything.

THE CHAIRMAN: Is there a second? Is there discussion?

MR. MILLER: I think I made my view clear. The Governor can't be made to come if he doesn't want to anyhow, and if it is his budget, I can't conceive of his not sending somebody to defend it.

THE CHAIRMAN: Any further discussion?

MR. CASE: I think it is only fair to say that the Committee feels that this is an important, not a critical, but it is an important provision to be retained in the Constitution, for two reasons:

First, the one that has been suggested earlier, namely, that it does give constitutional authority for Members of the General Assembly to call people who are in the Governor's coterie to appear and explain the budget. Without this provision, it could be contended that the Governor has no such power, and if that contention would

prevail, and it could very easily prevail, then it would seem to me that the Legislature, despite the practicalities that have been suggested here by Dale Adkins, might indeed be shut off from additional information and information it should have.

Secondly, the second clause is equally as meaningful, because that says that the Governor shall have the right to appear, and if the separation of powers doctrine is presented to its ultimate, it might well be that the Governor could, or his people could be denied the right to appear, so on both counts, the Section gives an easy flow of rights and privileges between the Governor and the Legislature and to me is a very meaningful and helpful Section of the Constitution, and to just eliminate it because you want to shorten the document to me makes no sense at all.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: Section 13 of the Legislative Department says, The General Assembly shall have the power to compel attendance and testimony of witnesses and the production of records and papers, et cetera, before any

committee, even a committee of the General Assembly.

JUDGE ADKINS: We voted that down, didn't we?

MR. GENTRY: We made some changes.

THE CHAIRMAN: The Report is to come up.

MR. SCANLAN: After lunch, I find myself agreeing with Mr. Case. I think the reasons he gave are perfectly valid, and I would say as a result of passing Subsection 6, where the Legislature is now placed under a budget gun, there is a special need to make sure that the Legislature has all the resources, all the means of obtaining information about a budget that it must pass within a time certain.

THE CHAIRMAN: Any further comment or discussion?

MR. CLAGETT: Only that Mr. Scanlan is dying violently.

THE CHAIRMAN: Mr. Sayre?

MR. SAYRE: I would like to move --

THE CHAIRMAN: There is a motion before us, a motion to delete Section 7.

Mr. Sykes?

MR. SYKES: I would like to offer an amendment to that motion, which would restore the last clause, so that there would be an express power to the Governor any person he designates of the right to appear.

THE CHAIRMAN: Do you accept the amendment, Mr. Miller?

MR. MILLER: There is no objection to it. I think it is surplus, too. I am in favor of it. I think the Governor -- I can't picture the Legislature refusing to listen to the Governor.

THE CHAIRMAN: I don't remember who seconded.

MR. GENTRY: I would not accept the amendment.

THE CHAIRMAN: Do you want to move an amendment, Mr. Sykes?

MR. SYKES: I would like to move the amendment.

THE CHAIRMAN: Is there a second to the motion to amend?

MR. SAYRE: Second.

THE CHAIRMAN: All right, discussion on the motion to amend. The motion to amend is to amend the existing motion so as to eliminate in substance all of

Section 7, except the last clause, the Governor or such other person as he designates shall have the right to appear for the purpose of discussing the budget bill, et cetera.

MR. SYKES: I want to state the reason for the amendment. I believe that the power of the Governor or the people he designated to appear before the Legislature and explain an item of the budget is an important power to preserve explicitly. The first part of the existing language can cause trouble in my judgment, and is really unnecessary. The Legislature has ample power to cut appropriations and if the Executive Department doesn't cooperate with the Legislature, the Legislature has a very adequate weapon and more than likely the Executive, if interested in getting the budget passed, will accept invitations from the Legislature to come down and testify.

However, when you go beyond the power of the Legislature to cut the budget as a sanction and you make it a positive duty on the part of anybody in the Executive Department and maybe even the Governor under this language to appear and be heard with respect to any budget bill,

if you go beyond existing law which limits this to people who are expending money or applying for money, this means anybody in the department, and they can be made to come down and testify with respect to a budget bill; they might be asked to get into matters which would raise questions of executive privilege and which would get very sticky. I think it is unnecessary, it is complicated, subject to abuse, and there is a distinct difference in my mind between the two separate clauses, and that is why I made the suggestion that they be separated.

THE CHARIMAN: Mr. Case, do you want to make any further comment on the amendment?

MR. CASE: I would like to ask Mr. Sykes whether he would have the same objection if the words, expending or applying for State monies, if that were put back in, you would not have the same argument, would you?

MR. SYKES: My argument certainly would be less strong.

MR. CASE: Because I would have no objection to putting those words in, but I do think, reiterating the position I earlier took, that the Legislature ought

to have the right, in view of the fact that it is representing the people and this is the people's money that is being spent, it ought to have the right to call on the people who are applying for and are going to spend the State money to come down and tell the General Assembly what is going to be done with this money. I think it is a very fundamental right.

MR. SYKES: As a practical matter, I think that the addition of this language would make the Section more palatable to me, but I don't think it would make it completely palatable. I think the objections would still hold, because as a practical matter, the Legislature has this right, since it can say, if you don't come down, we aren't going to give you the money you want.

THE CHAIRMAN: Any further discussion on the amendment?

DR. BURDETTE: A parliamentary inquiry. How do I vote to preserve my preference for the language that the Committee has, preferably with Mr. Case's amendment, but if I can't get that, I would like to have at least as much as Mr. Sykes moves for.

THE CHAIRMAN: I would suggest you vote against the amendment and vote against the amended motion if that is what you want to do. To make that clear, a vote in favor of the amendment is not a vote to amend the Section. It is merely a vote to amend the motion. Are you ready for the question?

MRS. FREEDLANDER: I have another question. I would like to ask Judge Adkins whether, under the Executive Department, a provision for messages and reports to the Legislature would not cover some of this.

JUDGE ADKINS: I was thinking about that. My immediate answer would be No, without having given it very careful consideration, because I think this implies the right to appear and testify before the committees; the right to send a message or to inform the State of the State would involve insofar as the whole Legislature is concerned. That is just an offhand opinion.

THE CHAIRMAN: Are you ready for the question? The question arises on Mr. Sykes' motion to amend Mr. Miller's motion. The motion is to amend the pending motion so that it will be to eliminate the first part of

Subsection 7 and retain the last clause. A vote in favor of this motion is not a vote in favor of making that change in Subsection 7. Is that clear to everyone? All those in favor of the amendment, please signify by a show of hands.

MR. BROOKS: Eleven.

THE CHAIRMAN: Contrary?

MR. BROOKS: Six.

THE CHAIRMAN: The motion is carried, 11 to 6. The question now arises on the amended motion. Are you ready for the question?

DR. BURDETTE: Is the amended motion including the modifying language that Mr. Case is willing to accept or not? I myself hope so. I will vote for it in either case. What are we voting for?

THE CHAIRMAN: I take it the modifying language would not now be pertinent, because that pertained to the first part that has been eliminated as I understood it.

DR. BURDETTE: I didn't think we did. I thought we were not eliminating anything.

MR. CASE: The first part is included in the

motion to eliminate.

DR. BURDETTE: I meant in the motion to eliminate, and making the motion that we eliminate only the first part. Now, I want to vote against eliminating the first part.

THE CHAIRMAN: I may have misunderstood the purpose of the added language. The motion to amend was to eliminate the first clause of the Section so that the motion now would be that Section 7, instead of reading as it does now, would in substance say merely that the Governor, or any such person as he shall designate, shall have the right to appear for the purpose of explaining the budget bill or any item therein contained.

DR. BURDETTE: No.

THE CHAIRMAN: It was my understanding that the language suggested by Mr. Case would have pertained to the first clause, eliminated clause.

MR. CASE: That is right.

DR. BURDETTE: My understanding of the parliamentary situation was we had a motion to eliminate the whole of Section 7.

THE CHAIRMAN: That is right.

DR. BURDETTE: I understood Mr. Sykes made a motion to eliminate, to amend that motion to eliminate only the first part.

THE CHAIRMAN: That is correct.

DR. BURDETTE: Of Section 7, and we were voting on his amendment.

THE CHAIRMAN: That is correct.

DR. BURDETTE: Now, we will have to vote on the question of whether we do any elimination in 7?

THE CHAIRMAN: That is correct.

DR. BURDETTE: I want to vote to eliminate nothing in 7.

THE CHAIRMAN: Then you would vote against the motion. The motion now is to substitute for the present Subsection 7 a Section providing in substance only that the Governor or any such person as he shall designate shall have the right to appear for the purpose of explaining the budget bill or any item therein contained. A vote in favor would amend the Section in that manner. A vote opposed would retain Subsection 7 in its

present form. Are you ready for the question? All those in favor of the motion as amended, please signify by a show of hands. Contrary? The motion is lost, 6 to 11.

Mr. Sykes?

MR. SYKES: Now, may I make a motion to add to the first clause the language, expending or applying State monies, to carry that over?

THE CHAIRMAN: Where would that go, Mr. Case?

MR. CASE: That would go in the first clause, any person of the State Government, I guess after the word, Government.

THE CHAIRMAN: What would be the language added?

MR. CASE: In Section 7: Expending or applying for State monies.

THE CHAIRMAN: Expending or what?

MR. CASE: Expending or applying for State monies. That is the language. We can smooth it out later. That is what you have in mind, isn't it?

MR. SYKES: Yes.

THE CHAIRMAN: Is there a second?

MR. SAYRE: Second.

THE CHAIRMAN: Mr. Sykes has the floor.

MR. SYKES: I waive any debate.

THE CHAIRMAN: Mr. Sayre?

MR. SAYRE: I would like to ask Mr. Sykes if he would allow an amendment to that, which I would insert, any person other than the Governor?

MR. SYKES: Yes, I would accept that.

THE CHAIRMAN: Then, I take it that the, other than the Governor, would come after the phrase, monies, that has just been added, would it not?

MR. CLAGETT: After person, wouldn't it?

THE CHAIRMAN: I hardly think you would say, any person other than the Governor in any department, would you?

MR. SAYRE: I realize the problem.

MR. SYKES: In any person in any department, branch, bureau, or agency of the State Government, et cetera, then after the word, monies, you would put, other than the Governor in parentheses, I think.

MR. SAYRE: That is fine.

THE CHAIRMAN: You accept it, Mr. Sykes?

MR. SYKES: Yes.

THE CHAIRMAN: Do you want to say anything about it?

MR. SYKES: No, sir.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: Mr. Chairman, I don't want to prolong this. It is not going to wreck the State one way or another, but I think the Members of the Commission, I would like them to bear in mind the fact that such provisions as this could cause great embarrassment to the executives. I had the privilege in the past of sitting a great many years on the Federal Appropriation Committee, and if for political reasons somebody wants to make the Governor unhappy, they could call in somebody who has been overruled by the Bureau of the Budget and say, General So-and-So, or Judge So-and-So, would you have done this. Oh, no, he says, and it is a way of opening up a lot of political fraud which probably doesn't do the public any good.

THE CHAIRMAN: Mr. Case, do you want to make any further comment?

MR. CASE: The only comment I want to make is that both of these points that have been made are exactly what the Committee intended, and if the Commission would feel more comfortable with this language than the way we wrote it, certainly we have no objection.

THE CHAIRMAN: Any further comment or discussion? Are you ready for the question? The question arises on the motion to amend Subsection 7 by adding in Line 3, after the word, State Government, the words, expending or applying for State monies (other than the Governor.)

Are you ready for the question? All those in favor, signify by a show of hands. Contrary? The motion carries, 7 to 6.

Is there any further comment, discussion or motion with respect to Subsection 7? Then, we will move to Subsection 8 on Page 29.

MR. CASE: To show you how amenable the Chairman is, I could have defeated that motion if I voted.

Section 8, Subsection 8, the last truly substantive provision, deals with supplemental appropriation

bills. Bear in mind that before lunch we were talking about amendments or additions that the Governor might make, and we said that we would talk about what happens to them if they are tacked onto the budget bill, and then the budget bill becomes law by operation of, or by reason of inaction by the Constitution. We said that those supplemental, or those amendments would then become supplemental appropriation bills, and they would be controlled by Subsection 8. Now, Subsection 8 deals with another type of supplemental appropriation bill, and really this, what I have been talking about, is minor thrust of the Section. The major thrust is the desire or need of the State Government to appropriate additional funds after the budget bill has become law.

Bear in mind, I have said earlier, that all of the information that the Committee could get stated very definitely that no money bills should pass until the budget bill has gone through and become law, and this Section 8 continues that provision as the first statement and then says, or provides for procedures allowing for supplemental appropriation bills, either of the general kind, namely,

for new State programs, or for the exceptional case of where a supplement has been offered by the Governor to the budget bill, the bill has become law by inaction and the supplement then is transferred to this Section for its procedural life.

I will now read it. It is somewhat long: Neither house shall consider other appropriations until the budget bill has become law. That is what the present Constitution says, and is the very important thing which I emphasized a minute ago. It should be retained.

Any such appropriation shall be embodied in a separate bill limited to some single work, object or purpose as clearly defined therein, and such bill shall be called a supplementary appropriation bill. That is the existing law and present Subsection 8, which if you are following it with your red book, is on Page 32.

Each supplementary appropriation bill, including amendments or supplements to the budget bill which have not become law, shall provide the revenue necessary to pay the appropriation by a tax, direct or indirect, to be levied and collected as shall be directed in said bill,

and, in addition, in the case of amendments or supplements provided for by Subsection 4 of this Section, by funds available therefor in conformity with estimates made by the Governor, such estimates being subject to Subsection 5 of this Section.

Let me explain that. The law now is that each supplemental appropriation bill must provide the revenues to pay the appropriation by a tax. That is to say, every bill has to contain its own tax for that specific purpose. That was the heart, one of the hearts of the Goodnow Amendment in the 1916 Budget Amendment which has been in our law ever since. We may have added to that, though, bear in mind, this provision that says that where the Governor has suggested a supplement to correct an omission like that, and then the budget bill becomes effective by operation of law through inaction, that supplement goes over and becomes a supplemental appropriation bill. Now, assume that the Governor has funded his supplement by an increase in the revenue estimates, which is usually the way it is done. Generally speaking, the supplemental budget bill of the Governor is funded in this

way. As a matter of fact, I can think of no other supplemental appropriation bill sent down by the Governor's office that was funded in any other way in recent or modern times than through an increase in revenue estimates, but what this provision says is that that same thing will carry over and that, as far as the supplement is concerned, which now becomes a supplemental appropriation bill, it doesn't have to be funded by a tax, but can instead be funded by a change in the revenue estimates made by the Governor.

That is, in effect, what it says, and with reference to Section 5 at the end, that is the Section which deals with the message, I think. This Section makes it clear that you cannot do by supplemental appropriation bill that which you cannot do under Section 5.

The next sentence is, No supplementary appropriation bill shall become law unless it be passed in each house by a vote of a majority of the whole number of members elected, and the yeas and nays recorded on its final passage, and such bill shall be presented to the Governor as provided in Section 17 of Article 2 of the

Constitution, and thereafter all of the provisions of said Section shall apply. This, of course, is a statement taken from the present Constitution, and I assume will need a recasting, in view of the, of what has been done by this Commission, but the substance or the meaning of it is this: That the bill has to be passed by constitutional majority, what we call constitutional majority and what I understand the Commission has already decided shall be the rule, that all laws have to be passed by constitutional majority.

Secondly, that supplemental appropriation bills shall be subject to veto by the Governor.

The powers and rights of the Governor and the General Assembly specified in Subsection 7 of this Section, which is the one we just had all the debate on, shall apply to any supplementary appropriation bill, which seems to follow, of course. If the Governor and General Assembly respectively have the rights that we have discussed with respect to the budget bill, obviously they ought to have it with respect to the supplemental appropriation bill.

THE CHAIRMAN: Mr. Case, with respect to the last question, is there any objection if the Committee on Style deems it proper to eliminate that last sentence from this Section and simply add into Subsection 7 the phrase, supplementary appropriation bill?

MR. CASE: No, just so that the General Assembly and the Governor and the Executive Department have the same rights with respect to supplementary appropriation bills as they have with respect to the budget bill.

THE CHAIRMAN: Any questions?

Mr. Sayre?

MR. SAYRE: If the General Assembly moves to have a bond issue, that is its own source of revenue, I gather?

MR. CASE: Bond issues?

MR. SAYRE: I am thinking now where the General Assembly decides that this is the course of action to initiate, to have the State have a bond issue, that would be a way of meeting the expenditures required, wouldn't it?

MR. CASE: Bond issues -- this doesn't involve

capital spending, you understand that?

MR. SAYRE: Yes. I am wondering how this does keep away. There is a clear distinction throughout here, is there, as to whether it is capital expenditure and what is a new tax revenue measure?

THE CHAIRMAN: I think for the purposes of the record, Mr. Case, when you said capital expenditures, you meant capital expenditures that aren't funded out of the general Treasury?

MR. CASE: That is right, funded by bond issues.

MR. SAYRE: And this is clear? I am just asking, that this is strictly a Treasury matter only?

MR. CASE: That is right. Bond issues, as you recall, are taken care of by Section 34, which we discussed at College Park last time.

MR. SAYRE: Right. Okay.

THE CHAIRMAN: I think Section 1 would answer your question, the General Assembly shall not appropriate any money out of the Treasury except by, et cetera.

MR. SAYRE: I know this is jumping the gun, but when you have an emergency session, do you still

require that whatever is done in the emergency session requires additional monies, and they have a source of money? Can an emergency bill be passed that doesn't have a source to fund it?

THE CHAIRMAN: Mr. Case?

MR. CASE: The question is, you are speaking now to Section 9?

MR. SAYRE: Yes, but it is related to this.

MR. CASE: Section 9 merely says, if you want to consider it, I will read it, The General Assembly may consider any emergency appropriation at an extraordinary session.

This is the substance of the last clause in the second sentence of present Section 14. It makes it clear that emergency appropriations can be considered at special sessions.

THE CHAIRMAN: But they are subject to all the rules of the remaining subdivisions.

MR. SAYRE: They are subject?

MR. CASE: Yes.

MR. SAYRE: Okay.

THE CHAIRMAN: Mr. Sykes?

MR. SYKES: To what extent does the power of the Governor to fund supplemental appropriations by increased revenue estimates impair the protection built into the requirement that there be no deficit financing?

MR. CASE: Well, there isn't any deficit if he comes up with an estimate that covers the appropriation. There is no budget deficit. There may eventually be a cash deficit, but actually even in its worst times, Maryland has been cash rich. It has had a tremendous amount of cash balances.

MR. SYKES: You don't see this as a problem?

MR. CASE: No.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: If we have as now proposed a Section in the Legislative Article, Section 15, which reads, No bill shall become law unless passed in each house by a majority of the members and on its passage the yea and nay votes --

THE CHAIRMAN: May I interrupt you? Mr. Case

pointed out in his presentation that this language would have to be changed by the Committee on Style to conform to it, so that you probably would not need the detail that is referred to in this Section.

MR. GENTRY: Excuse me. You could save about five lines.

THE CHAIRMAN: Any further questions? Are there any comments?

DR. BURDETTE: I have two questions: Does the Committee intend by this Subsection that the General Assembly initiate a supplementary bill?

MR. CASE: Yes.

DR. BURDETTE: The second question relates to this budget estimate arrangement. Why wouldn't it be worthy of consideration that these supplementals provided for by Subsection 4 either be within the budget estimates or provided for by tax? Do you make a point that they are always of late in a budget estimate but maybe of late doesn't mean forever? I don't know.

MR. CASE: This does that, in effect, because it says that -- it defines the supplement, let's call it

the supplement as distinguished from supplemental appropriation bill. The amendment which the Governor has tacked on becomes a supplemental appropriation bill by definition, and this Section says that it can be funded by a tax or by the revenue estimate. The difference is that the supplemental appropriation bill started by the General Assembly or initiated by the General Assembly cannot be funded by a change in revenue estimate.

THE CHAIRMAN: I think Dr. Burdette's question then goes to one of language. He reads, and I did too, that with respect to the supplemental bill, you would have to fund it by tax and by the revenue; you use the words, and in addition, in the sixth line from the bottom. I understood your comment just now to mean that in the case of a supplementary, not a supplementary appropriation bill but a supplement to the budget that becomes one it could be funded either by a tax.

MR. CASE: That is the intention.

THE CHAIRMAN: It should be, or. Does that answer your question?

DR. BURDETTE: Yes.

THE CHAIRMAN: I wonder if we couldn't substitute the word, on, for, in addition?

MR. CLAGETT: It would be, or, in the alternative, by.

MR. CASE: That would be better. I accept that.

THE CHAIRMAN: Can we make that tentatively, subject to the Committee on Style coming up with something better?

MR. CASE: Yes.

THE CHAIRMAN: Or in the alternative, instead of, and in addition.

MR. CASE: That is the idea. It gives both methods, appropriations.

MR. SYKES: That is a minor matter. I think or is much better than, in the alternative.

THE CHAIRMAN: Leave the resolution to the Style Committee. Any further questions or comment on this Section?

Mr. Case, I have a question, and I haven't the remotest idea what the answer should be. In the

second sentence, Each supplementary appropriation bill, including amendments or supplements to the budget bill which have not become law shall provide the revenue necessary to pay the appropriation by tax direct or indirect. Is that term broad enough to include some sort of revenue funding, a toll, for instance, or an assessment, such as you have in special assessment districts?

MR. CASE: Well, certainly a toll is a tax. It has been held in some context that a special assessment is not a tax, where you are dealing with roads and things of that nature, but they only come into play when you are dealing with capital as distinguished from operating items. I can't visualize of any place where you would have a special assessment on land that would fund this kind of provision and other than special assessment on land, every time the Government takes something away from you, it is a tax, in the broad basic generic sense.

THE CHAIRMAN: That is what the Committee intended here?

MR. CASE: That is right.

THE CHAIRMAN: Mr. Sayre?

MR. SAYRE: Perhaps this is a more appropriate question to ask in the next Section.

THE CHAIRMAN: The one you spoke to me about earlier?

MR. SAYRE: Yes.

THE CHAIRMAN: No. I think it would be better to wait. Any further discussion of Subsection 8? If not, we will proceed to Subsection 9, Page 32.

MR. CASE: These are just what we have left out. There have been some things we left out along the way I haven't mentioned. I don't know how far we want to get into this. I thought we finished with Subsection 9.

THE CHAIRMAN: You mentioned it in connection with an earlier one. That was all.

MR. CASE: If anybody has any questions about it, I will be glad to answer them.

THE CHAIRMAN: I had the same concern that I think it was Mr. Sayre expressed, and I take it that what you mean here is to say simply that the General Assembly

may consider any supplementary appropriation bill, not a regular budget bill and to remove any doubt, wouldn't it be better simply to say, instead of emergency appropriation, to say, any supplementary appropriation bill? In other words, I take it that it is not the purpose to infer that a special session could not consider a supplementary appropriation bill that was not an emergency.

MR. CASE: Special session wouldn't have an opportunity to have a supplementary appropriation bill because it would never have a budget bill, and therefore there could be no supplemental, nothing to supplement. All this says is that it gives the General Assembly the right to appropriate money for special sessions.

THE CHAIRMAN: This is just the point that I am trying to make. Do you mean to say that the Legislature would not have the power to have, or to introduce a supplementary appropriation bill that would be independent of a budget? In other words, in a special session?

MR. CASE: Special session is called to act on one specific thing, and I think very definitely it should not be allowed to go ahead and have the right to

introduce new appropriation bills. This would open a Pandora's box.

THE CHAIRMAN: That one thing might be something that would involve a supplementary appropriation bill.

MR. CASE: I don't follow you because if there is no budget bill, there is nothing to supplement. There is no budget bill. It goes down in a special session.

THE CHAIRMAN: I understand that. Suppose you had an emergency arise and the Governor called a special session of the Legislature. Wouldn't you necessarily, if you were going to appropriate any money, have to do it by supplemental appropriation bill?

MR. CASE: I don't know how you could supplement something.

THE CHAIRMAN: I realise that, except as I understood it in Subsection 8, any bill that provides an appropriation and isn't the budget bill is by definition a supplementary appropriation bill.

MR. CASE: A supplemental appropriation bill is a bill, is a money bill, which is supplementary to the budget bill. Now, I think about it and what I think is

this, that what this Section says, in effect, is that if you have a special session, these rules, 1 to 8, et seq, are applicable.

THE CHAIRMAN: Yes.

MR. CASE: That is what it really means.

THE CHAIRMAN: Suppose you had a good disaster and the Governor called a session of the Legislature to provide aid to the affected area, and they had to do it by money. Wouldn't this necessarily be by supplemental appropriation bill? There would be no budget before the Legislature.

MR. CASE: We are getting all tangled up in words. Let me read to you what 14 says, so that we can have it all before us: In the event of any inconsistency between any of the provisions of this Section, and any of the other provisions of the Constitution, the provisions of this Section shall prevail. Obviously, that is inappropriate for the Constitution.

Nothing herein shall in any manner affect the provisions of Section 34 of Article III of the Constitution. We don't need that. That is already taken care of,

or of any laws heretofore or hereafter passed pursuant thereof. Now, we get to it: Or be construed as preventing the Governor from calling an extraordinary session of the General Assembly, or as preventing the General Assembly at such extraordinary session from considering any emergency appropriation or appropriations.

Now, Mr. Sachs wrote this Section. That is his contribution to this.

THE CHAIRMAN: If I may pursue this a moment, Mr. Case, because I think your next to last comment is the one that troubles me about this. The question I have in my mind is whether the use of the words here, emergency appropriation, or, the use of similar words in the present Constitution, connote the idea that the Legislature can make an appropriation out of the general Treasury other than by a budget bill or a supplementary appropriation bill, and I understood you to say --

MR. CASE: It is my feeling that they cannot.

THE CHAIRMAN: Right. Therefore, since at this emergency session you would not have a budget, it would necessarily mean that any appropriation would have

to be by supplementary appropriation bill, which would bring into play all the safeguards that you have thrown around such a bill. Now my question, therefore, is wouldn't this be made abundantly clear simply by striking the words, emergency appropriation, and saying, supplementary appropriation bill?

MR. CASE: Sure.

MR. CLAGETT: I don't know that I can quite agree with the answer given. I think there is a broader connotation to the word, emergency appropriation, and there can be an appropriation which is neither a supplement nor is it supplementary.

THE CHAIRMAN: This is true. This is what troubled me about the language, but the Committee has made clear that there is no possibility under the draft that they propose to provide such an appropriation, except in one of those two manners.

MR. CLAGETT: I don't think that is right.

THE CHAIRMAN: This is implicit in the question I asked the Committee on Section 2.

MR. CLAGETT: Because there is that question

in my mind, I would move that they further consider Subsection 9.

THE CHAIRMAN: Is there a second to the motion?

MR. SAYRE: Your motion?

THE CHAIRMAN: No, Mr. Clagett's motion.

MR. GENTRY: Second.

THE CHAIRMAN: Mr. Clagett, do you want to say anything more?

MR. CLAGETT: I think the discussion has pointed up just what we mean by the motion to have the Committee further study and clarify. It is my understanding that the use of the language here is broader and not restricted only to supplementary bills.

THE CHAIRMAN: Now, I think Mr. Case ought to comment on it, and the crux of this comes down to the question that was asked with respect to Section 2, that if it is not provided for in the budget, it cannot come out of the general Treasury; that it must be by a supplementary appropriation bill, which must provide a tax, which would mean to me that in a special session, to meet an emergency, the Legislature would have to provide the

tax to raise the money.

Now, is that the position of the Committee?

MR. CASE: That is absolutely correct, Mr. Chairman, and let me say that the Committee doesn't need to consider this any more, because I have considered it and right now, and the answer is this: That the way the Committee looked at this whole program is that there should not be an opportunity for deficit financing in this State. Let's start with that.

Now, that being the case, whether it be the budget bill itself, an amendment to the budget bill which the Governor submits, a supplemental appropriation bill which the Governor submits, a supplemental appropriation bill which a Member of the General Assembly thinks about, in any of these, in any and all of these cases, there has to either be a tax to support the appropriation or there has to be enough money in the Treasury, based upon sound estimates made by the Executive to support the appropriation. When you come to this type of a situation at an emergency session, it is my feeling that the same rule should apply, because if you didn't

apply it, then you could vitiate the whole program by merely calling the session, calling the General Assembly back after a few days rest and going ahead and opening the floodgates. To me that would not be right.

MR. SCANLAN: I gather, Dick, that this is somewhat a clarification over old Subsection 14. That language certainly could be construed as relieving an extraordinary session from the restrictions that otherwise apply, and your language in the new Section 9 makes it perfectly clear that the regular restrictions on funding, financing, et cetera, applies, is that correct?

MR. CASE: That is right. This may be somewhat inappropriately worded, but this is the idea.

THE CHAIRMAN: Mr. Sykes?

MR. SYKES: Mr. Chairman, can I suggest as a solution to the problem here that it doesn't promote clarity to call something a supplemental appropriation which is not a supplemental appropriation. You have a special circumstance here. In an emergency or extraordinary session, you don't have a budget because the budget is limited to the regular session. You don't have

a supplemental appropriation because you don't supplement anything. What you are talking about is the manner of making an emergency appropriation, and what I think we want to say is that the Legislature may consider an emergency appropriation at an extraordinary session, and it shall make it in the same manner as it makes the supplemental appropriation, or handles the supplemental appropriation bill in the regular session, but this raises an additional question, which hasn't yet been discussed. The extraordinary session can have before it a proposal by the Governor for funding, or a proposal made by the Legislature. The proposal made by the Governor is not a budget, but the question would arise as to whether or not the Legislature would have to dispose of the proposal by the Governor before it could handle the thing by itself, whether the same relationship should exist between the Governor's proposal and the Legislature's proposals, as exist between the budget and the supplemental appropriation bill. It seems to me that that would have to be thought through, but that what we are really talking about is the manner of making an extraordinary appropriation,

which is a new bird, and is something not like anything else here and shouldn't be called what it isn't.

THE CHAIRMAN: May I comment?

MR. SYKES: Surely. I made no motion or anything.

THE CHAIRMAN: It seems to me that it is still a supplementary appropriation bill. It may not be supplementing a budget then currently before the Legislature, but it certainly is supplementing the budget for the current fiscal year, but the real reason is it seems to me that Subsection 6 or 7, I think, says in effect, that any bill that is not a budget bill and appropriates money is by definition a supplementary appropriation bill.

MR. SYKES: I don't read it that way.

THE CHAIRMAN: I think it says precisely that. I think those are the words. Which Section is it, Dick?

MR. CASE: For supplementals, 8.

MR. SYKES: I don't read 6 or 7 that way.

MR. CASE: Eight.

MR. SAYRE: Mr. Chairman?

THE CHAIRMAN: Mr. Sayre.

MR. SAYRE: If you go through the full thing, I interpret it exactly the way you do and the use of the word, emergency, is really a carryover from the old Constitution, not needed here. An extraordinary session would be interpreted as emergency, and the only question here is, was the General Assembly called to consider a supplementary appropriation or while in an extraordinary session, they have the right to bring up a supplementary appropriation, if they so wish, is that right?

THE CHAIRMAN: That is not Mr. Clagett's question or what is implicit in his amendment. The Committee, as I understand it, has changed the Section so it now reads, The General Assembly may consider any supplementary appropriation bill at any extraordinary session. Mr. Clagett's motion is to have that reconsidered by the Committee, not on a matter of phraseology but on the principle that the Legislature at an extraordinary session ought to have the right to make an appropriation without providing the revenue to fund it. Is there any discussion on that question, which is before us?

MR. SAYRE: With regard to that, then, I would

simply say this holds the Legislature to be responsible, whereas to leave it openended allows for irresponsibility.

THE CHAIRMAN: I would like to ask one question of Mr. Case. I think this is right. I suppose the Legislature could raise money by a bond issue and appropriate it at such a special session.

MR. CASE: Yes, but all the safeguards of 34 would then come into effect with respect to that.

THE CHAIRMAN: Right. Any further discussion? Are you ready for the question? The question, then, arises on Mr. Clagett's motion to recommit the Subsection 9 to the Committee for further study, for the purpose of considering whether the Legislature ought to have the right to make appropriations at an extraordinary session without being subject to the requirement that it provide the revenue. Are you ready for the question?

MR. GENTRY: May I ask one question? In reconsideration of this, is Mr. Case going to make any change along the lines you have suggested?

THE CHAIRMAN: He has already agreed to that change, as I understand it. Any further discussion?

Are you ready for the question? All those in favor, signify by a show of hands. Contrary? The motion is lost, 4 to 13.

MR. MILLER: Mr. Chairman, we have trouble hearing down here. Would you read how it reads now, please, sir?

THE CHAIRMAN: Section 9 now reads: The General Assembly may consider any supplementary appropriation bill at any extraordinary session.

Section 10 -- there is no Section 10.

MR. CASE: It might stun everybody to realize this. That is the Report.

THE CHAIRMAN: Any further questions? Mr. Sayre has a motion.

MR. SAYRE: Mr. Chairman, I have already talked to the people. This is a simple motion. I move that the Committee on State Finance and Taxation be requested to submit a Report on the subject of dedicated or earmarked taxes with appropriate constitutional language. This motion is intended to apply to the future measures having a taxing effect emanating from any budget bill,

and it is not intended to encompass use tolls, such as employed for toll bridges, highways or capital expenditures when outside the Treasury.

THE CHAIRMAN: Is there a second?

MR. CLAGETT: I will second it.

THE CHAIRMAN: Mr. Case, can you indicate what the position of the Committee is on this question?

MR. CASE: Well, the position of the Committee on this question is one of not so much of protestation as prostration. We are pretty well on our backs and up against a deadline. Let me first tell you what Phil is talking about, or at least try to explain it, and then suggest to you what I have said to him and also what is before the Committee.

In a number of State Constitutions, there are provisions which say, in effect, that the General Assembly, or the legislative body, cannot dedicate funds to any given purpose, and I think by and large that this is a good provision, because it prevents the rigid structuring of government through various revenue sources.

Now, we do have in this State an example of

dedication, which no matter what we did here in this Constitution couldn't be changed, and that is the dedication of the motor vehicle revenues to the payment of the State Highway bonds. The State Highway bonds, there are about 300 million of those bonds outstanding right now, and they are serviced by the State Roads Commission's share of the gasoline tax, that is to say, State Roads Commission gets 50 per cent of the gasoline tax, and that 50 per cent, along with the titling tax and finances and forfeitures are dedicated by law and by contract to service these bonds. In about a month from now, the seventh cent, all of which goes to the State Roads Commission, will be dedicated to a new issue of bonds, so that all of your gasoline taxes are dedicated funds. They are all dedicated to the servicing of outstanding bonds. This is a valid contract between the bond holders and the State, and could not be breached by a new Constitution or anything else, since that contract is protected by the contract clause of the Federal Constitution, but there are other dedicated funds that we have in the State; the University of Maryland has dedicated funds and then the

myriad of boards and agencies, such as the Hairdressers Board, et cetera, have what they call special funds. They are not called dedicated funds but they are special funds which mean, in effect, that these agencies finance themselves through the fees they collect.

This is a broad subject, and is one that would require an intensive study. I have written to Mr. Sayre in response to his request that our Committee look into this and told him that certainly it couldn't be done except on a prospective basis, because of the argument or position I have just stated; I also told him that our Committee has not or had not met and indeed, has not met since I received his request in this area, and therefore I haven't had a chance to put it up to them. However, the Committee does have before it two other subjects which the Committee, or perhaps before the Committee which are perhaps more important than this, and they are Article 15 of the Declaration of Rights, in which I shall attempt to preserve some very old language and some very modern concepts, and we will talk about that, perhaps, at the next meeting, and all other provisions

of the Declaration of Rights, which flow into the tax area, such as the lottery, such as the special assessment afforded to farm properties, such as the sites of taxation, et cetera. That is in the Third Report yet to come, and we have discovered, unfortunately and belatedly, that there is a big gap in this whole program which has been sort of the result of an Alphonse and Gaston act between Judge Adkins' Committee and mine. This deals with the question of an appropriate fiscal officer or agency be designated in the Constitution to receive revenues. We talked today about outgo, which is very important, but we have not yet approached the problem of who gets the money in the first place, and Judge Adkins and his reporter and Mr. Sachs and I had dinner last night and discussed this matter until a fairly late hour, and this is going to have to be the subject, I am afraid, Mr. Chairman, of a Fourth Report, so the question is really one of how much can you expect the poor girl to do?

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: I am seconding Mr. Sayre's motion, notwithstanding the protest that I am listening

to from Mr. Case.

MR. CASE: This is just a recital of fact.

MR. CLAGETT: I protest, too, because the Political Subdivisions Subcommittee has recommended the creation of authorities and the collection of a tax by those authorities, and that was amended by Mr. Adkins to provide that the authority could collect the tax levied by the Legislature, by the General Assembly, and it seems to me it fits in squarely with the problem that Mr. Case is being asked to make a study of and included in just his protest in having to do that.

THE CHAIRMAN: Any further comment?

MR. CLAGETT: We don't feel qualified to do it.

THE CHAIRMAN: Mr. Sayre?

MR. SAYRE: If no deadline is set and we simply ask for timely submission to this Commission of material on that subject, that would satisfy me as long as we get it before our attention. I am pleased with the State of Maryland now, but I am worried about where we might go if we don't have such a prohibition in regard to the future. I don't mean on existing things. Expediency

can lock you in so that certain things can be jeopardized, and I think that this type of thing has to be considered during our course of operations.

THE CHAIRMAN: Not meaning this to sound as facetious as I know it will, I am afraid that timely submission would be, in effect, day before yesterday.

Any further comment?

MR. SAYRE: I hope we vote favorably for having a Report submitted.

THE CHAIRMAN: Are you ready for the question? All those in favor, please signify by saying Aye. Contrary, No. The Chair is in doubt. All those in favor, please signify by a show of hands. Contrary? The motion is lost, 8 to 10. Any further comment or motions with respect to this Report?

Mr. Sayre, let me say to you that if there is time, I feel quite certain that the Committee will make such a study. I cannot see how it could possibly be incorporated in the Report. It may be possible for the Committee to do it and have a study paper, which would be included in the work book.

MR. CASE: May I say something else?

THE CHAIRMAN: Mr. Case?

MR. CASE: I told Mr. Sayre that I thought it was a tremendously interesting point and one which probably deserves study, and I will try to do that study, but I don't want to be under compulsion if I don't get it done to be drummed out of the court for nonobservance of an order.

THE CHAIRMAN: If there is no further discussion of this Report, we will take a recess for just a few minutes.

(At this time a short recess was taken.)

THE CHAIRMAN: Let's go ahead now on elective franchise, Seventh Report.

MR. GENTRY: This Seventh Report follows the Fifth because we were asked to make certain clean-up changes which was done here and I will just read the sections without too much comment. Section which is the section related to disqualifications would read as proposed by the Committee.

Disqualification. The General Assembly by law shall establish disqualifications for voting for mental incompetence and for conviction of serious crime and may provide for the removal of such disqualifications.

It was felt at the last meeting this left open the question of whether it was a pardon by the Governor of Maryland or pardon by another Governor would be sufficient. In thinking of this in committee it was felt that since we are going to allow the General Assembly to establish disqualifications it would be quite appropriate to allow them to provide for method of removal.

MR. CLAGETT: If we make it mandatory that

they do so, why don't we make it mandatory that they shall also provide for the removal? In other words, why do we use "may" instead of "shall" in the last sentence?

MR. GENTRY: I think we felt that they certainly would provide. I don't think the Committee, unless I hear something, has any strong feelings about that. We would be content if it is felt better to have "shall."

THE CHAIRMAN: If you are going to substitute "shall," you have to turn the sentence around a little, I think, by saying something such as "and shall provide the means or methods by which such disqualification shall be removed." You don't want to make it mandatory that they be removed.

MR. MILLER: May be removed. Aren't there some you wouldn't want removed?

THE CHAIRMAN: I just suggested that.

MR. GENTRY: It comes back to me now. I think that was the reason for the "may." It was felt they would provide for a system or criteria for the

reinstatement but they by using "may" would not be compelled in every case to provide for reinstatement.

MR. CLAGETT: I am satisfied with the explanation.

DR. JENKINS: It appears here your voting for minor mental incompetence might be improved by voting for reason of mental incompetence.

THE CHAIRMAN: I assume Dr. Jenkins just submitted it to the Committee on Style?

DR. JENKINS: That is right, for reason of mental incompetency. Not voting for or against mental incompetency in this context at least.

MR. CLAGETT: Although we may be qualified as having mental incompetence.

THE CHAIRMAN: Any further questions on Section 4? If not, we go to Section 7.

MR. GENTRY: Section 7, Local Elections. Voting qualifications for local elections shall be as provided in Section 1 of this Article except that any municipal corporation (incorporated town and city) may establish a period of minimum residence not exceeding

one year and may extend the right to vote to nonresidents owning taxable property within its limits.

The only change here as shown there was to delete the word political subdivisions because it was pointed out last meeting that was too broad and encompassed counties. It was the intention that it only relate to incorporated towns and cities. We hopefully feel this ties in with Section 11.04, the Political Subdivisions, which uses the words municipal corporation.

THE CHAIRMAN: Any question or comment? Section 8.

MR. GENTRY: Section 8 reads as follows: If, within sixty days from the date on which a bill becomes law, a petition is filed with the office of the governor to refer the law to a vote of the people, the law shall be submitted to a vote at the next general election. If rejected by a majority of those voting on the question at the next general election, the law shall stand repealed thirty days thereafter.

If the petition is filed before the date on which the law is to take effect, then, unless the law

is one passed by a three-fifth vote of all the members of each house of the General Assembly, it shall not take effect until thirty days after its approval by a majority of those voting on the question.

Previously we had had a situation where we provided that the law should be suspended and we provided also that the petition should be filed before the effective date.

It was pointed out that might be impractical because the Legislature can, of course, pass a law with an immediate effective date, that is, one which precedes June 1. In this fashion we completely revamped this and we feel it is actually better than previously submitted. We allowed a 60-day period for filing of a petition but, of course, the law would not be suspended during the interim. We don't feel that is a serious handicap to a referendum anyway. Only if it is rejected, the law, by a majority of those voting on the question, would it stand repealed. We have, however, allowed for a suspension if in fact the petition is filed prior to the effective date unless, of course, it

is one passed by the three-fifths. Whether we use three-fifths or two-thirds will have to be separately taken up but that is an isolated question.

THE CHAIRMAN: Any questions or comments?

MR. CASE: What is the substantive change here?

MR. GENTRY: The change is this. That previously we had said that the petition had to be filed before the effective date. It was pointed out when this was submitted that that was very impractical because you could have a law passed with an immediate effective date which wouldn't allow for filing of a petition. Therefore, we went to this style which allows you a 60-dayperiod in which to file your petition. That would be the substantial change in this draft over this previously submitted. Plus the fact that in the other draft previously submitted we provided for suspension of the law during the referendum period until the vote was taken unless it was one of these passed by a three-fifths vote. Here we only allow for suspension if in fact the referendum is filed prior

to the effective date of the act.

MR. CLAGETT: Is this three-fifths instead of two-thirds still open to a later decision by the Commission?

THE CHAIRMAN: Yes. When we finish all the sections we are going to submit for consideration all extraordinary votes at one time. Any further question?

MRS. BOTHE: On reading this casually, I get the impression in the first phrase that the petition can't be filed until after the bill becomes law, language 60 days from the day on which the bill becomes law. I know that is not what the Committee meant.

THE CHAIRMAN: The sense is I take it before the expiration of 60 days after date --

MR. GENTRY: That is correct.

MRS. BOTHE: I suggest the language be changed.

MR. CASE: Is it clear that if -- this is what I understand the Commission passed as a matter of policy -- that if the law were passed by X per cent, three-fifths, two-thirds, whatever it is, that a

petition for referendum would not suspend the operation of that law.

MRS. FREEDLANDER: That is correct.

MR. CLAGETT: That is what this says.

MR. CASE: It doesn't say that. I suppose you could imply it but it doesn't say it.

MR. BROOKS: Second paragraph.

DR. BURDETTE: Law shall stand repealed 30 days thereafter.

MR. CASE: If the petition is filed before the date on which the law is to take effect, unless the law is passed -- yes.

MR. CLAGETT: It stands until it is repealed.

MR. CASE: That is right, but suppose it is passed by three-fifths. It doesn't really say what happens.

THE CHAIRMAN: Mr. Case's point is it does not affirmatively say.

MR. CASE: That is right, it does not say it.

THE CHAIRMAN: This again is a question for

the Committee on Style. The intent is that the section shall be clear that if it is passed by a three-fifths vote, then it shall take effect and be repealed if rejected by the voters.

MR. GENTRY: Correct.

MR. CASE: I have another question. Under the proposed document we are drafting, is the General Assembly going to be permitted to state when a law shall become effective?

THE CHAIRMAN: Yes. There is a provision that unless a date is stated, it is June 1 as it is today.

MR. CASE: Suppose you have a law that is to become effective November 1 of an election year and then 60 days after that when the election is over, this petition is filed. Then you are fouled up for two full years.

MR. SYKES: We considered just that point in committee. That was the reason why the critical date was not the date the law goes into effect but the date the bill becomes law. The Article on the Legislative

Department points out that a bill becomes law when it passes the Legislature with the requisite number of votes and gets the approval of the Governor. This advances the time that the petition has to be filed and was designed to eliminate precisely the foul-up Mr. Case was worried about.

THE CHAIRMAN: I think this was one of the things discussed at the last meeting of the Commission or second meeting. Does that answer your question, Mr. Case?

MR. CASE: Yes.

DR. BURDETTE: I am very unhappy with that technicality. Because no layman, this is only style, no layman would read this language that the bill becomes law until it is in effect. This is a lawyer's difference. I just wish we could get some language --

THE CHAIRMAN: This is one the lawyers would say was abundantly clear.

DR. BURDETTE: You see what I am talking about. It ought to be abundantly clear to a layman. I

understand it but people would get fouled on their deadline date by this.

THE CHAIRMAN: We refer that to the Committee on Style.

DR. BURDETTE: I would rather actually say within 60 days from the date on which the bill receives approval by the Governor.

MR. SYKES: Then it can be passed over veto. You can't do it in a compendious way.

MR. CLAGETT: When does the bill became law.

THE CHAIRMAN: When it has received final approval to make it a law.

MR. CLAGETT: And not its effective date.

THE CHAIRMAN: Either when signed by the Governor or passed over his veto.

THE CHAIRMAN: Any further discussion of the section? If not, we move to Section 9.

MR. GENTRY: Section 9 would read as follows with the new language underlined. A petition shall be sufficient to refer a law, or any part thereof, to a

vote of the people if signed by a number of eligible voters equal to five per cent of the total number of votes cast for governor in the last gubernatorial election, provided that not more than one-half of such required number shall be voters residing in any one country.

I think we embodied here the direction which we were given at the last meeting when we submitted a rather complex method of reaching the percentage.

We have also eliminated from here the language which we previously had which was to the effect that if at least half the required signatures were obtained prior to the filing date, you had an extension of 30 days. The reason for the deletion of that was we felt since we were giving the 60-day period which we hadn't previously, we are now giving the 60-day period for filing the petition it was not necessary to carry forward the one-half of the required numbers and then 30-day extension.

THE CHAIRMAN: Any questions?

DR. BURDETTE: The question here is whether

the Committee considers the language being proposed by the Subdivision Committee that Baltimore City be considered a county is applicable here also.

MR. GENTRY: Yes, we do.

THE CHAIRMAN: This isn't clear in any draft of the Constitution we now have because the provision actually, I think, is literally included only in the Article on the Judiciary but in discussing that the Commission decided for all purposes Baltimore City would be considered a county.

MR. MITCHELL: I would like to ask a question. I am thinking in terms of the requirement that not more than one-half of such required number shall be voters residing in any one county. I am thinking of the possibility that the Legislature may make a classification of various counties by grouping them and perhaps have three counties with great differences in population. Would that still be proper in that case?

For example, suppose Prince Georges were tied in with St. Mary's and Charles on a classification. Would there be some adjustment on this referendum to

relate to such a local bill as that.

THE CHAIRMAN: I am not sure I follow you. You are talking about a bill that creates the classification of counties?

MR. MITCHELL: I am applying it to existing situations. Suppose we had a situation of a local law passed for one county.

MRS. FREEDLANDER: We are not going to have it.

THE CHAIRMAN: We don't contemplate there would be any such.

MR. MITCHELL: We could group it. I think the figure was three counties.

MR. CLAGETT: More than three.

MR. MITCHELL: Three or more than three.

MR. CLAGETT: More than three.

MR. MITCHELL: Probably wouldn't make any difference.

MR. CLAGETT: It means if there was a classification of three counties, still a statewide referendum could be held where more than one-half came

from two of those counties, composing the three. No objection to that. It would have to equal the five per cent.

THE CHAIRMAN: Further discussion?

MR. GENTRY: Section 10. Restrictions. No plan for legislative reapportionment or congressional redistricting, no law imposing a tax and no law making an appropriation for maintaining the state government or for aiding or maintaining any public institution shall be subject to referendum.

Only change is as shown.

THE CHAIRMAN: Any comment or question? Mr. Sayre?

MR. SAYRE: Question. When we talk about appropriation for maintaining the state government, et cetera, does this mean that you could alter something in this area other than appropriations? It seems to me we ought to have more restrictions than this because there is a standard prohibition pretty much against changing the judiciary.

MR. GENTRY: There were two areas which it

was felt by the Commission should be withdrawn from referendum. Those two areas were the reapportionment area, both spheres, and also money matters. That was the intention and that's what is embodied here.

MR. MILLER: Nothing sacrosanct about the judiciary. If there were a pork barrel bill to make three times as many judges and the people didn't want it, it would be voted down.

MR. GENTRY: That is the submission, Mr. Chairman.

THE CHAIRMAN: Mr. Gentry, the reason I asked you to pause before was I remembered having seen in the minutes of the August meeting something that is contrary to what is here. You haven't gotten those minutes until this morning and neither did the Commission. But going back to Section 9, the previous recommendation of the Commission considered at the August meeting was that the petitions be distributed so as to include not less than 5 per cent of the eligible voters voting for Governor in the last gubernatorial election in each of ten counties. That was

eliminated by the Commission.

Then there was a motion by Mr. Bond seconded and rejected by a vote of nine to ten, that the Constitution provide that no more than one-half of the petitioners reside in Baltimore City or in any one county.

Then I think, I am not sure whether the previous motion had left the matter to be reconsidered by the Committee.

I raise the question now because apparently on the record the action of the Committee is contrary to what the action of the Commission was last time. I wondered whether the Commission in making the change in Section 9 thought it was following the mandate of the Commission.

MR. GENTRY: We certainly did. We thought that it was the sense of the Commission that the one-half from any one county be -- if we had that wrong, this is wrong.

THE CHAIRMAN: All I am trying to get is whether this reflected the judgment of the Committee or

whether you were merely following what you thought was the mandate of the Commission.

MR. GENTRY: On the first question it does represent the judgment of the Committee. On the second question we thought it also represented the judgment of the Commission. Apparently if you have the minutes that show the votes going nine to ten, the other way --

THE CHAIRMAN: The vote was not affirmative in requiring that you do anything. It was the fact that the motion to require you to do something was lost. I just wanted to find out the position of the Committee.

MR. GENTRY: The Committee does feel that we should have the one-half reservation.

THE CHAIRMAN: With that explanation, is there any further comment by anybody with respect to Section 9?

MR. CASE: Under your rules, can you consider this?

THE CHAIRMAN: Yes, because this is new

matter, not required by the Commission.

MR. CASE: The Commission has voted on this subject once.

THE CHAIRMAN: It simply rejected a motion to require the Committee to make thischange. It did not affirmatively say they could not make the change.

MR. CASE: That is a lawyer's answer if ever I heard one.

THE CHAIRMAN: The matter had been committed to the Committee to study the matter and come up with a representative solution or solution that would give representation throughout the state to the number of signatures required. A motion at the August meeting was instead to require the Committee to adopt this recommendation. That motion was defeated.

I take it it was then left to the Committee. I was merely inquiring of Mr. Gentry whether his Committee was acting under the misapprehension they were required to make this change because his comment so indicated.

MR. SCANLAN: In view of, I won't say the

uncertainty of the legislative history of this proposal, but in light of Mr. Case's point, would the Chair entertain a formal motion moving the adoption by this Commission of Section 9 as recommended by the Committee? If it is proper, I would like to make that motion.

THE CHAIRMAN: Under our procedure unless there is objection or a motion to reject the section, it is adopted.

MR. SCANLAN: I understand that. I thought because of this peculiar prior history --

THE CHAIRMAN: I have no objection.

DR. BURDETTE: What is the motion?

MR. SCANLAN: That we adopt Section 9 as proposed by the Committee.

JUDGE ADKINS: Second.

DR. BURDETTE: Has the Committee considered this situation which I am indebted to Mr. Mitchell for pointing out the problem? If we do go into classification of counties and allow legislation by classification and we had one big county classified in with a group of small counties, the big county having an overwhelming majority of the population in the

classification, would this make the thing really inoperative? Do we have a problem here that ought to be settled?

THE CHAIRMAN: I think the answer is this, Mr. Clagett can correct me if I am wrong. What that Committee proposes is an automatic referendum on such classifications anyhow.

DR. BURDETTE: I was not speaking about legislation for classification but legislation applicable to the counties within the classification.

MR. CLAGETT: I think the answer to that question would be that notwithstanding the sizable number coming from that one county, you would still have to have one-half of 5 per cent coming from the smaller counties.

DR. BURDETTE: That is the point but it might be absolutely impossible to do so if, for instance, the classification were Prince Georges and Calvert unless you had to go up into Anne Arundel or Montgomery, not within the area to which the law was applicable.

MR. SCANLAN: How would it be impossible?

MR. CLAGETT: Why couldn't you go to other

counties?

DR. BURDETTE: You could but you would have the answer this law does not apply to us. You have a burden getting peoplewho say it does not apply to us to vote on the legislation. It is not impossible.

THE CHAIRMAN: Am I correct that the referendum provisions, all of which are not included in this report, contemplate only statewide referendum?

MR. GENTRY: That is correct.

THE CHAIRMAN: So that you're not in the situation supposed by Dr. Burdette limited to the particular counties that may be affected by the legislation in question? Is that correct?

MR. GENTRY: Yes, sir.

THE CHAIRMAN: I am not sure I follow your point if that is not it, Dr. Burdette.

DR. BURDETTE: As I understand the Committee to mean by this referendum, it may be incorrect, that if we classify the counties of Maryland into some, how many can we have, five?

MR. CLAGETT: Maximum.

DR. BURDETTE: Maximum of five, we could have a situation wherein if the classification were geographical that one county is very large, the others very small, are you saying then to reverse the legislative action for that group of counties by referendum would require a statewide vote?

THE CHAIRMAN: Yes, sir.

DR. BURDETTE: I suspect that is the case.

MR. BROOKS: The only counties in this case that are going to be concerned with the legislation are those in the classification so Dr. Burdette's point, as I understand it, is that trying to get the concern of the smaller counties sufficient to meet the demands of the 50 per cent vote may be insurmountable based on the gubernatorial requirement of how many voters you have to have so you do have a problem.

DR. BURDETTE: I agree with Mr. Brooks' analysis of it exactly.

MR. HOFF: I think practically speaking if it were a question of the small counties against a larger county you could enlist a lot of support from the other

small counties in the state and perhaps not have too much trouble getting your half of 5 per cent.

MR. CLAGETT: Remember that referendums are not particularly favored anyway. So the difficulty here is in line with that thought, I would say.

MR. MITCHELL: Mr. Chairman, I move that the Committee be requested to prepare another provision relating to referenda in view of the possibility of a classification of counties where the Act may apply to fewer than all of the counties in the state. There should be -- is that clear?

THE CHAIRMAN: Mr. Mitchell, that is a matter that was discussed a number of meetings ago probably before you came on the Commission. I would have to rule this would be a reconsideration and submit to a vote without debate the question of whether it should be reconsidered. Is there a second to the motion? You understand that Mr. Mitchell's motion is that the Committee be instructed to consider as an alternate or addition to a statewide referendum a means of referendum limited to a locality where the law

applied to that locality.

MR. SCANLAN: Is this motion displacing my own pending motion, Mr. Chairman?

THE CHAIRMAN: I am sorry. No, it will not. We will hold your motion in abeyance.

MR. SCANLAN: My pending motion is to adopt Section 9.

MRS. FREEDLANDER: I seconded it.

THE CHAIRMAN: Any further discussion on that motion?

MRS. BOTHE: Which motion?

THE CHAIRMAN: Motion to approve Section 9 as presented on Page 3 of the report. Any further discussion?

MR. CASE: May I ask a question?

THE CHAIRMAN: Mr. Case.

MR. CASE: If the General Assembly should pass a law relating to Apalachia,let's say, whatever that means, up there --

MR. CLAGETT: Up there where the mountains are.

MR. CASE: Under the way this is written, could that law, assuming it isn't one of the prohibited kinds that can't be subject to referendum, could that law be put on the ballot if Baltimore County, Baltimore City, and Anne Arundel County ganged up to put it on the ballot and nobody in the affected area --

THE CHAIRMAN: It would be subject to statewide referendum.

MR. CASE: It would be subject to statewide referendum even though nobody in the area wanted it there?

THE CHAIRMAN: None of the petitions were in the area, that is correct. Any further question? Ready for the question on the motion to approve Section 9 as drafted? All those in favor signify by saying aye, contrary,no. So ordered.

Mr. Mitchell, you have a motion to have the Committee reconsider the question of Statewide referendum and to consider and report a method for local referendum on matters pertaining only to local areas. Is there a second to that motion? Motion fails for lack

of a second.

MR. SAYRE: I think just to accommodate Mr. Mitchell I think the political subdivisions may have something where local government could bring up this under its own charter or form of government so that would not/be eliminated.

THE CHAIRMAN: Any further discussion of this report? Any further questions?

Mr. Gentry, I believe this concludes the Article on Suffrage and Elections as well as the Article on Declaration of Rights, does it not?

MR. GENTRY: That is correct. The only thing I would mention to the Commission is we still have open the matter of preamble. Again I will invite anybody that wants to submit a draft or proposal or thoughts of a preamble or comments on the ones we already have, the two, I would appreciate it because it is an area somewhat nebulous to work in.

THE CHAIRMAN: Now we move to consideration of the Sixth Report of the Committee on Procedures. You should have the report and an accompanying bill. They

were both handed to you in the envelope this morning. Mr. Brooks says the bill was submitted to you this morning, the report you had by mail.

(Discussion off the record.)

MR. SCANLAN: The reporter thought this was to be taken up at a later date and I think that explains his absence.

This is the Sixth Report of our Committee on Convention Procedures. Basically it is a report that urges the adoption of a proposed enabling act which if it was passed by the General Assembly which convenes next January, would form the statutory basis for the Constitutional Convention itself.

As indicated in the first page of the report itself, many of the matters,I would say the majority of the matters of substance embraced in the proposed bill have previously been considered by the Commission. We believe that the Commission's action on those previous reports have been reflected in the bill itself. Hopefully that's so.

The first section of the bill, of course,

is the bill heading with title of the bill. I see no need to read what clearly is a very long title or heading. I think perhaps longer than most bills that we have encountered. This was deliberate. Very frankly, the Committee has always had in the back of its mind the possibility that somebody some day might attempt to prevent the convention from being convened by litigation. Of course, one of the areas that might be attacked would be to raise the issue that the bill or the statute under which the convention was convened was unlawful in one respect or another.

As you know, a bill should in its title or heading reflect the substance of the bill or the matters that the bill deals with. That explains the rather long bill heading. I don't believe it's necessary to read it. You all have it in front of you, unless someone requests me to read it, I will assume everyone has read it or is reading it.

MR. BOND: I do have one question on the bill heading. I just read it. I see nothing in the bill heading that indicates how the convention will be

paid for. I wonder if it should not be in the bill heading.

MR. SCANLAN: I believe it provides for compensation of the delegates.

MR. BOND: I am talking about the cost of the special election particularly.

MR. BROOKS: This is the point I was suggesting be taken up as a special report not in this report by the Commission today because this is something that will have to be really drawn up and presented in a different bill from this and should go on to the Budget Department right now. I think it probably would be an appropriate item of business after the consideration of this report.

MR. BOND: Does everyone understand the point I make? There is no provision in the bill to provide for the expense of a special election. If we do it, we have to do it fast.

MR. SCANLAN: That is correct.

MR. SYKES: Can I make one suggestion about drafting this title? When you try to summarize express

provisions of an act, you run a risk that you don't include them all or that they don't exactly summarize all the provisions of the act. In any act, especially of this importance, there ought to be a general line in the title which doesn't say that the act provides for anything but says that the act relates to something. I would suggest that this be amended to read an act providing for all the specific things you want to provide for and at the end you should add and relating generally to a Constitutional Convention of this state.

THE CHAIRMAN: Mr. Scanlan has noted it. Any further questions as to the title?

MR. CASE: I have a fundamental question about this bill. I don't know whether now is the time to bring it up or not.

Everybody is so taken up with what the Constitution ought to be, I wonder if we have lost sight for a moment of what the Constitution is today. I have some serious doubt as to whether this bill can be an emergency bill. The Constitution says now that no measure creating or abolishing an office or granting

any franchise or special privilege or creating any vested right or interest shall be enacted as emergency law. To me this bill creates an office and it grants a franchise.

MR. SCANLAN: Originally the bill was not proposed as an emergency measure.

MR. CASE: Your explanation doesn't touch this point.

MR. SCANLAN: I know. Originally the bill was not proposed as an emergency bill but in order to provide a time schedule in which candidates could file their candidacies between the time the Legislature dealt with it and holding the special election at the time this Commission had previously approved, it was necessary to make it an emergency measure.

I suppose it is arguable whether or not within the meaning of the constitutional provision to which you refer it is arguable whether or not this bill actually creates an office in the sense of the Constitution.

MR. CASE: I am all for it being an emergency

measure if we can do it but I think you might really be pulling out all stops if we got crocked on that point after you had gotten it through as an emergency measure.

MR. CLAGETT: Where are you reading? I am looking at the section dealing with referendum.

MR. CASE: That is the section that deals with emergency legislation.

MR. CLAGETT: It says shall be subject to rejection or repeal under this section.

MR. CASE: No.

MR. CLAGETT: That's page 94.

MR. CASE: Twelve lines from the bottom after the semi-colon. No measure creating or abolishing an office or changing the salary terms duties of an office -- that's old time tested words.

MRS. BOTHE: Is it absolutely necessary that this be an emergency bill?

MR. SCANLAN: There are problems with that. The next session of the Legislature is to pass the bill. If it passes it as a regular measure, it would not

become effective until June 1, '67. Then, of course, that would begin the time when people could file. You have to give people a chance to file. There has to be a period between June 1, at least 30 days, for people, maybe more.

MR. CASE: I appreciate the problem. All I am saying is that this does to me create an office. These people are going to be officers.

MR. MARTINEAU: Are you talking about delegates? Wasn't the office of delegate created by the bill passed last year? This merely provides how they are elected.

MR. CASE: It grants a franchise, gives you the right to vote for them.

MR. MARTINEAU: I am not sure that is the franchise meant.

MR. CLAGETT: The office has already been created.

MR. BROOKS: They have been created, 142 of them.

MR. CLAGETT: That has already been done.

MR. SCANLAN: I think the franchise referred to is the old Anglosaxon term of a grant, not special privilege, et cetera.

MR. CASE: You had better get a ruling from the Attorney General on it.

THE CHAIRMAN: I don't think it will serve any useful purpose to debate it further today. I am sure the Committee will consider it further. Any further questions as to the title of the bill?

MR. CLAGETT: I move that we actually ta ke or initiate immediate action to get a ruling by the Attorney General.

THE CHAIRMAN: I dn't think you need a motion. Mr. Scanlan is going to take that into consideration and will do what is necessary.

MR. BROOKS: The bill that did create the offices and provided for an election was an emergency bill last year.

MR. CLAGETT: That's what I was seeking through the back of my mind, it raised a red flag.

MR. BROOKS: It is to be ratified now by

public referendum.

MR. CLAGETT: That's why I say we better find out.

MR. CASE: There was some conversation at our table at lunch today there was no real authority to put that on the ballot. The whole thing is a nullity. Legislature has no right just to put something on the ballot.

MR. SCANLAN: I believe, however, that last objection by Mr. Case is one we wrestled with earlier and I think the Commission acted on that one.

MR. CASE: No question, the people have acted.

MR. CLAGETT: We are aware of that problem and have already overcome that one.

THE CHAIRMAN: Any further discussion of the title? If not, proceed.

MR. SCANLAN: Next is Section 1 of the bill. This section authorizes a special election of delegates to be held on June 6, 1967. The voters will be the legally qualified voters in each county of

the state and in each legislative district of Baltimore City. The representation, of course, will be equal to the number of delegates that the city or county possessed in the General Assembly of Maryland on January 1, 1967. That number has already been approved by the action of the Legislature at the last session.

I think an item here that perhaps will give rise to differences of opinion is providing that the delegates are to be elected from the county as a whole except in the case of the City of Baltimore in which case they would be elected from the legislative districts of the City of Baltimore. I believe this matter was before the Commission in connection with one of our previous reports. There was considerable debate about it. It was the Committee's view that we would be better able to guarantee the non-partisan basis of the election if the delegates could come from a county as a whole that once you divided them into legislative districts there was a possibility of greater political pressure by the parties in the particular county. Baltimore was treated as a special exception

because of the very large number of delegates that would come from the city if it was treated on an at large basis, I believe 43. For that reason the Committee continues to adhere to the view that the delegates should be elected from the county as a whole, the exception being the City of Baltimore in which case they would come from their respective legislative districts.

THE CHAIRMAN: Any comment?

MR. BOND: Was this point voted upon and approved by the Commission at a previous meeting?

THE CHAIRMAN: The point about the delegates running countywide?

MR. BOND: Yes.

THE CHAIRMAN: No, that is the proposal now made by the Committee.

MR. BOND: I would like to move for purpose of discussion that the section be changed and that the delegates to the convention run from the districts in the county as set forth by the law of the state as at present.

THE CHAIRMAN: From legislative districts?

MR. BOND: Yes.

THE CHAIRMAN: And subdistricts in the county?

DR. BURDETTE: Second.

MR. CASE: District.

THE CHAIRMAN: District. Is the motion seconded?

DR. BURDETTE: Second.

MR. BOND: My comment is I disagree with the Committee's conclusion that you get higher type candidates by having elections from the county as a whole. I think that if you have legislative districts in the county, you have a closer relationship between the voters and delegates and people might know the people who are running and I feel that by running from a legislative district, you get a higher quality and better type candidate because of the fact that it would take fewer votes to elect the man and also because his neighbors and the people who are in close proximity with him in business and other pursuits would have some contact with him.

I believe if you go to a county as a whole that then you in that case give a greater sway to a political machine, not saying all political machines are bad, political machines and politics are in it because a concentrated effort by a machine can sweep candidates into office regardless of if a man is strongly supported by neighbors and people with whom he is acquainted.

MR. CASE: I would like to ask a question, Mr. Chairman. Does Mr. Bond's motion mean that the candidates have to reside in the district but are elected on a countywide vote, which is one possibility? Or reside in a district and are elected from the vote of that district?

MR. BOND: The latter is my intent.

MR. CASE: The latter, in other words, the way the members of the House of Delegates are elected in Baltimore County and not members of the Council?

THE CHAIRMAN: That is right.

MR. CASE: It is important to keep this distinction in mind.

DR. BURDETTE: Does the present statute with respect to election of members of the House of Delegates require that the persons elected from districts and counties be residents of the districts or residents of the county?

THE CHAIRMAN: I think we are required to be residents of the legislative district from which they are to run as delegates.

DR. BURDETTE: I imagine the point that the Committee in Section 2 which hasn't been brought up yet has language which if that be a fact is in conflict with Section 1 by providing that the delegates must possess all of the qualifications for a seat in the House of Delegates. There is a certain pyschological conflict here.

THE CHAIRMAN: In other words, one would be residence qualification in which you have a contrary recommendation. Any further discussion?

MR. HARGROVE: It occurs to me perhaps there also should be a period of residency. As I recall, the members of, particularly the reapportioned districts,

the Court of Appeals held that the one year requirement which had previously been in the requirement did not affect someone who wanted to run. It seems to me we don't want to get in that same problem. I know there were two cases, one in the Fourth Legislative District of Baltimore City, I think one in Anne Arundel County, if I am not mistaken. I would suggest that perhaps a year residency or some term of residence should be there to just avoid this problem.

THE CHAIRMAN: We will consider that separate from the present motion.

MRS. BOTHE: Before I vote on the motion on the floor, I would ask that Mr. Scanlan expand his Committee's theory that a better selection would be obtained on a countywide vote.

MR. SCANLAN: At the time this non-partisan aspect of this special election was discussed, there was an attempt, as I recall, to insure that by specific statutory language which the Commission rejected. But certainly in the discussions both in the Committee and in the Commission at the time the matter was before it,

every one agreed, I assume, I thought, or most of us agreed that it was hoped that the election would be truly non-partisan, that the Democratic and Republican Central Committees in a particular area and various civic groups such as League of Women Voters and other types of groups would attempt to agree upon or solicit a list of distinguished citizens of the area of the county to stand as delegates for the convention.

I think it is more difficult, I believe, to do that when -- it is easier for my county of Montgomery, entitled to 16 delegates, much easier to put together a list of 16 distinguished citizens if we could draw from the county as a whole without being confined to the artificial boundaries, they certainly are artificial, highly gerrymandered boundaries of the legislative districts as they now exist.

The reason for the legislative districts, as I recall it in the reapportionment bill, was to cut down the opportunity to have a countywide political machine dominate. I remember certainly our friends of the Eastern Shore gave this as a reason and I think it

is a pretty good reason in that context but this is to be a non-partisan election. This is not a partisan election. Legislative districts were put in to curtail the power of political parties or political machines in political elections. They have no necessary applicability in this special type election which is to be a non-partisan election. I just think it is more difficult to draw a selective list of say 16 than it is to come up, less difficult to draw a list of 16 when you can draw from a county as a whole than it is to artificially chop it up seven, seven and two.

THE CHAIRMAN: Any further discussion?

MR. BROOKS: I think this is a real political problem for this Commission and the Commission ought to really, I think this is the ideal time to consider what its hopes are in regard to a constitutional convention. I would think it would be the Commission's interest to already be considering those persons in the various legislative districts and counties who might make good delegates and already begin encouraging such persons to consider running for delegates. We are talking

about 142 persons who really require or should have a better background in government and governmental understanding than even those elected to the General Assembly of this state. That's a lot of people to have any special knowledge and understanding in government unfortunately.

The proposed size of the convention is actually an unusually large group to be writing the kind of document that might be desired for a state constitution. Although there is precedent in a few cases of having such large conventions prepare constitutions, we know that the majority of constitutions have been prepared by much smaller groups.

I think what Mr. Scanlan says in regard to how much easier it is to find really qualified people in certain areas of some of the counties rather than actually making a hardship by subdividing the county and then looking for a number of precisely qualified people in each district is much easier in spite of the risk that it may well be that you may lose all the qualified candidates against an organization

if an organization in fact supported a full slate on a countywide basis. You do take the risk either way. For instance, some of the counties are divided up into seven or eight districts, two or three seats in the legislative House of Delegates per district which means the maximum persons we can get from such district is one or two. We already know from practical experience, we have looked around to see who are qualified people, for instance, this Commission has consultants to the Commission who by chance I doctored up a map to see where our consultants live. They live primarily in two districts, legislative districts. If we divide the state on that basis, we could not have many of our consultants even considered delegates if we considered them the type of persons to make good delegates. I think we should consider seriously as a Commission whether or not it isn't worth taking the risk of being able to have more qualified candidates or persons in various areas of the state consider being delegates and actually having a chance of being elected than it is of being overwhelmed by the political machines in these

counties.

THE CHAIRMAN: I would like to comment before the debate closes. To a certain extent my comment has to be personal but I can't illustrate the point in anyother way.

I think as John has indicated we are somewhat on the horns of a dilemma in this situation and we have to face up to it and make a choice as to which is the better or which is the lesser of two evils perhaps. I think I can illustrate my point better by using my own county as an illustration than in any other way.

I am a resident of Baltimore County. It has seven legislative districts, each of which has three delegates. The county itself has three large centers of population, southeastern end, Essex-Dundalk area, north central part concentrated around Towson, Dulaney Valley, Loch Raven area, and to the west, and the west end of the county concentrated around the Catonsville area.

If candidates run countywide, there is, of

course, the possibility that the number of candidates would be such that you would have elected as delegates those who were known to and hence supported by the people in these large centers of population and thereby prevent election of people not in these large centers of population.

I happen not to live in one of the large centers of population and my district, I have to get personal in this sense here to illustrate the point, happens to be very, very large geographically. It happens to include, I think, an area in which this Commission could find a large number of persons that it would deem to be well qualified to serve on a constitutional convention.

In addition it happens to include among its residents Mr. Case, Dr. Winslow, and myself. I could name, I am sure, and Mr. Case, I am sure, could name 25 or 50 people without trying in that same large area. If we have a system of limiting the election of candidates by districts, it would mean that there could be three delegates elected from the Fifth Legislative

District regardless of how many might be qualified. There would be three elected from each of the other districts which might have three or more than three or less than three persons who were well qualified.

I cite this as an illustration merely to point out that the problem has no clear answer. It has dilemmas and difficulties no matter which solution you choose. I think we should carefully decide which we want to recommend.

MRS. FREEDLANDER: Mr. Chairman, I think what you have said is applicable to the City of Baltimore also. I agree with what Mr. Brooks said that the caliber of people that would qualify for constitutional convention is different from that who may qualify for other policital office. If you select people from districts in Baltimore City, you run the risk of two things. Either there is no one who will have the time or financial means or ability or intelligence or interest or you will have what I have already gotten wind of, some of the political bosses are going to put up straw men -- I heard this in the city --

people who will not be informed, who will not vote unless someone tells them to vote. I would like to urge us not to even think in terms of districting as it applies to Baltimore City.

MRS. BOTHE: Using your example, Mr. Eney, I feel quite concerned about the countywide election because if my understanding is correct, had you not had districting in Baltimore County, you might not even have any representation from the area in which you and Mr. Case live in the General Assembly.

The Baltimore County powers that be, as I understand them, are so divided that the districting is what has preserved some decent representation in Baltimore County in the General Assembly and I dare say may do so also in the convention. Just, for example, I don't want to make any particular comments about the members of the General Assembly from your county, but I don't think the representation is one which we would like to see in the convention altogether.

On election day, for instance, a member of the National States Rights Party presented me with their

ticket for Baltimore County. They had recommendations from all the various districts except one. That was the second district. They had no recommendation. They had the note that all candidates from that district were Jews.

The outcome of the election was very favorable to the position taken by the National States Rights Party and I deeply fear that the very thing you want to avoid in Baltimore County will occur if we don't have districting based on the experience we had in the recent election on the selection of delegates to the General Assembly from your county.

THE CHAIRMAN: We did have districting.

MRS. BOTHE: Because of the districting you were savedcomplete chaos.

JUDGE ADKINS: As I understand it, Mr. Bond's proposal would not require any area not now districted to be districted?

THE CHAIRMAN: That is correct.

MR. CLAGETT: Notwithstanding the fact that eventually the product of the convention and hopefully

that product being somewhat similar to the one we are working on trying to produce now being more easily sold to the people. When that time comes, I believe that, and notwithstanding there is some validity to the statement Mr. Bond made a while ago, that your representation from each of the districts would be closer to the people, I don't feel that that has any real merit in today's means of communication, television, radio, good roads, access, easy communication generally.

So that within the boundaries of the county you certainly have the representation of all points of view going into anybody who lives in that county. Any individual living in a county today is fairly representative of the thinking of that county rather than worrying about splitting it up into segments by way of the legislative districts. Therefore, all factors considered, I think that where we are dealing with a special subject, one that does require special qualifications, we would be better off going ahead and drawing from that county as a whole rather than from the special areas.

DR. JENKINS: Mr. Chairman, I am sure we all want a very high level constitutional convention. But our concept of blue ribbon groups in our society is changing a bit as all of you lawyers know. I am not at all concerned about the lack of qualified people by districts. Granted that in some districts we may find a concentration, I hope we will not take the view that qualified people cannot be found in other districts.

My concern is how are we going to circumvent the politicians used in a narrow sense, not that people are not available in all of these districts.

MR. CASE: Mr. Chairman, I, like yourself, have mixed emotions about this. I would like to speak in support of -- before proposing a motion, there is just no question about the fact that the Chairman stated in Baltimore County, the larger pool of qualified people are going to be drawn, can be drawn from one district, and if the motion prevails, the effect will be to exclude some or a great number of these people from the Commission's deliberation. I think you have to think in terms of what the Chairman of this

Committee said. Namely that what we are trying to do here is to get the best possible people on a nonpolitical basis and this can be done through such organizations as the League of Women Voters, as various other groups, do good groups, if you will, but still groups of this kind.

As far as the politicians are concerned, let me say this to you, Dr. Jenkins. Politicians are not going to mount any great assault on a ticket which is put together by these groups and has the unqualified support of the press unless they get a great deal of money to do it because politicians don't operate as they do unless they have money to run their precincts unless they have money to print ballots, money to get their workers to the polls and so on.

DR. JENKINS: You are referring to politicians in the narrow sense, not statesmen?

MR. CASE: I am thinking of the people you talk of as politicians that get the vote out in Baltimore County, for example, in the Twelfth and Fifteenth Districts. I don't think people in the Twelfth

and Fifteenth Districts who run the county where political leaders/are going to have the money, not going to try to raise the money, contributors will not put in the money to mount an assault against the kind of a slate that I envision would be running from our county if it could run countywide. Therefore, I think the danger which you and Mrs. Bothe see thinking in terms of an election for House of Delegates and so on where it is meaningful to the politicians really disappears when you think of the context of this election.

THE CHAIRMAN: Any further discussion?

MRS. BOTHE: I know I have spoken to the point but I would like to call the Commission's attention to the figures which were sent out to all of us last week. Baltimore County apparently turned in about a 25 per cent vote against a constitution. I think this follows out what I was just saying. I don't think Mr. Eney or Mr. Case or Dr. Winslow would get elected at all if the county isn't districted.

THE CHAIRMAN: Any further discussion?

MR. SCANLAN: I want to say that certainly

the recommendation of the Committee here is premised on the assumption or, if you will, a faith that this election will be truly non-partisan. If we are right in that assumption, then we have made the right recommendation. If we are wrong in that assumption, if the politicians in Baltimore County, as Mrs. Bothe seems to fear, get hold of this situation and actually field the slate while running as non-partisan really being a partisan slate, we have made the wrong recommendation but we can't predict the future, can only hope that political parties along with other civic groups will rise to the level of principle at least in this one instance and be party to a truly non-partisan election. I know the figures of my own county show we turned in over ten to one vote for this Constitution. It certainly would be far more difficult for us to field a slate of really qualified citizens if we were forced to draw from the confines of artificial legislative districts.

MR. BOND: Mr. Scanlan, Mr. Case, and I all agree as to the facts. We come to a different conclusion. Speaking of what Al Scanlan just said, I

agree with him that if people rise to principle we will get the kind of delegates that we should have in the convention. But his point of view as to what a blue ribbon commission and what the people who vote think a blue ribbon commission should be, I wonder if there isn't a variance. As to Mr. Case's point, I agree if there is no money the political machines, as such, will not be interested. But I would like to point out in the Fifth Legislative District of Baltimore City there is $50,000 in pay involved. I can assure Mr. Case that the political machines of the Fifth Legislative District of Baltimore City are going to field tickets of what they consider qualified people, probably ex-legislators, people who have been active in local and state government and they will be running under political aegis. You have $6000,roughly the pay of a delegate, I think it is rather unrealistic to feel the people who have been active in electing delegates, 120 times 50 --

MR. SCANLAN: No.

MR. BOND: It is unrealistic to think people

who have been pushing people for public office for years are not going to be interested. I think they are going to be interested. I can certainly feel sure in my own legislative district a ticket will be fielded by the people who have been active in "politics."

Second or third, I really disagree with the Chairman and Mr. Case in that I feel that he and Dr. Winslow and Mr. Eney would have a much better chance of getting elected from a district where they are known and with the help of people who are sympathetic and who have somewhat the same background. I feel if Mr. Case, Mr. Eney, Dr. Winslow ran with non-partisan support, even with the support of the League of Women Voters -- God bless them -- with the amount of money in Baltimore County, the lower end of the county might completely sweep them out. I might be wrong but that is my judgment the way I feel. My last point is I still feel that there is nothing wrong with pure democracy. The closer we can get delegates to the people, I think it is well worth considering.

THE CHAIRMAN: Ready for the question now?

A vote in favor of the motion is a vote to require that all delegates, both county and city, run on the basis of residence in and election by legislation of districts. A vote no is a vote in favor of the Committee's proposal. Ready for the question? All those in favor signify by show of hands. Contrary. Motion loses five to fifteen. Any further discussion of Section 1?

MR. CASE: Let the record show this is the last time I will support Scanlan with such fervor.

MR. SYKES: I assume the Committee and appropriate authority, when they come to fielding slates, will bear in mind the concern of Dr. Jenkins and the necessity for something of an antidote to an excessively blue ribbon character to any slate that is fielded if we have any intention of getting elected.

THE CHAIRMAN: I would echo that. I have never used the term blue ribbon because I don't believe that's what we want but I think we do want a fully qualified convention.

MRS. FREEDLANDER: Mr. Chairman, how did our recent vote affect the City of Baltimore?

THE CHAIRMAN: That is open.

MRS. FREEDLANDER: Is a motion in order? I move the delegates from the City of Baltimore be elected at large also.

THE CHAIRMAN: Is there a second? I didn't hear it.

MR. SAYRE: Second.

THE CHAIRMAN: Do you wish to discuss it, Mrs. Freedlander?

MRS. FREEDLANDER: I did discuss it before.

THE CHAIRMAN: Mr. Scanlan, do you want to reply?

MR. SCANLAN: The Commission excepted Baltimore from the provision permitting the delegates to come from the county at large. I believe at least ostensibly because of the size of the delegation, 43. That's a very large number. I don't have a strong personal feeling against the motion. We wrestled with this for some time. There was never much enthusiasm on the Committee itself for changing the legislative district arrangement of Baltimore which is an arrangement

going back to 1867 though districts have been added whereas legislative districts in the counties are something new. I have heard Mrs. Freedlander's reasons for the support of her motion, I don't say they are without merit but they don't move me enough to want to depart from the Committee's report.

MR. BOND: I must confess I disagree with Mrs. Freedlander again because I think the whole City of Baltimore,taking her as an example, I feel she could win in the Fifth Legislative District and I don't think she would have a chance if the ticket ran as a whole. I do feel that that gives much more control to the people who have been interested in government over the years.

MR. SYKES: There is a real danger that if election is held in Baltimore City by districts, there are going to be some districts where the delegates will vote the way the Register of Wills and Orphans Court Judges and Court Clerks and a few of the other entrenched interests who are going to fight various aspects of the Constitution will want them to vote but I think that

risk is far out weighed by the chaotic results that would occur if you elected at large and by the lack of confidence in the Commission that would be inspired if you created new districts that would look like they are gerrymandered.

MR. GENTRY: I would say you could safely predict now if the vote were at large in Baltimore City, you would have all Adams, Aarons, Abrams, and Browns and no one else would have a chance.

MR. CASE: Going by lot.

THE CHAIRMAN: Any further discussion? I would like to ask a question to get it on the record. Am I correct that there are six delegates in each of the seven Baltimore City --

MR. SYKES: They vary.

THE CHAIRMAN: 42 or 43.

MR. SCANLAN: Six have seven and one has eight.

MR. BROOKS: Three have eight, two have seven, one has six.

MRS. BOTHE: There is another consideration.

That is the possibility of single shooting which will -- maybe triple or quadruple shooting -- 43 people to vote for, this is bound to happen and it is not good. This argument applies to the question just defeated as well but the smaller the number of candidates, the less possibility or less strength gained by a voter restricting his vote to less than the full number that he is entitled to vote for. It certainly is going to be a more democratic selection with a fewer number of people.

THE CHAIRMAN: Any further discussion?

JUDGE ADKINS: Would it be fair to ask for a preliminary vote from members from Baltimore? We don't have political bosses in my territory. I would like to vote with the majority of the Baltimore group. Could we have a preliminary vote from them?

THE CHAIRMAN: I don't know if you have to take a vote. You have the sense. I am not sure who are all the Baltimore residents. Mr. Sykes is, Mrs. Freedlander, Mr. Gentry, Mr. Mindel. Do you want to state your views?

MR. MINDEL: I am in favor of voting by districts.

DR. JENKINS: I can't conceive of voting for 43 people.

MRS. BOTHE: I have expressed my views.

MR. HARGROVE: I can't think of voting for 42 people.

MR. SCANLAN: In addition to Baltimore City's large size,its unique qualities in the political arena were also brought to the Committee's attention.

THE CHAIRMAN: Let me finish the poll. Mr. Bond, I think you are the only other one in Baltimore City.

MR. BOND: My views are perfectly apparent.

THE CHAIRMAN: Does that give you your poll?

JUDGE ADKINS: Yes.

THE CHAIRMAN: Ready for the question?

MRS. FREEDLANDER: I hate to have so many fine opponents. I hesitate to argue. I want to point out two things. One is special election. There would be no other issues except this. In the last election

we had 36 candidates who are the House of Delegates, plus four for the Senate, plus all others we had to vote for. I am not overwhelmed by the numbers. Plus the issues.

THE CHAIRMAN: Ready for the question. Question arises on the motion that the delegates to the convention from Baltimore City also run citywide instead of by districts. A vote aye is a vote in favor of citywide election of delegates from Baltimore City. Vote no is a vote in favor of the Committee recommendation that in Baltimore City the delegates be elected by districts. Vote loses one to nineteen. Any further discussion, question or motion as to Section 1? I have only a suggestion, Mr. Scanlan. Based on Mr. Case's suggestion which gives me a great deal of concern, I wonder if the Committee might not consider the possible desirability of drafting this section so that it merely provides for the election of delegates for the convention called by the previous act of the General Assembly ratified by the vote so as to avoid any inference that this act creates an office.

MR. SCANLAN: That would be perfectly acceptable to the Committee. I suggest it.

MR. BROOKS: One additional question on Section 1 has to do with the date of June 6, '67, we determined before. Apparently there will be a city election in Baltimore in May, 1967, and there had been some recommendation by outside groups that this Commission consider combining the election in the city, statewide election, if it is to be a special election, on the same day as city election, first to reduce part of the expense of a special election and second if voting machines are anticipated to be used, there may be a problem of this following so closely on the city election that the voting machines would still be tied up.

MR. SCANLAN: There are several reasons why that suggestion was not acceptable. One, if -- is it May 6?

MR. BROOKS: We are trying to determine the date.

MR. SCANLAN: Sometime in May.

MR. BROOKS: We think in May.

MR. SCANLAN: That would limit the time in which punitive candidates could file after the General Assembly enacted the law. If you are going to push the election back to early May, obviously sometime in early April people have to get their filing papers in and judges of elections have to prepare the ballot, that sort of thing.

Speaking for myself, I don't -- the Committee has discussed this -- I wouldn't like to see this statewide election for delegates who will serve in the convention on the important business of passing a new Constitution, I wouldn't like that election in any way if it can be avoided intermingled with a city election in the City of Baltimore despite the slight saving of money that might be effected if it could be combined.

MR. BOND: I can say in discussing this with the Board of Election Supervisors of Baltimore City -- and I was quite concerned -- you have a June election, actually have the canvass, if any protest or recount,

have the machines ready in Baltimore City, I don't have an answer, I tell you this is a real problem. It is usually three to four weeks before the canvass is in. If there is a recount, there would be a real problem.

MR. SCANLAN: There is a possibility for paper ballots on the constitutional election in Baltimore.

MR. CLAGETT: What is the basis on which they set the date for the mayoralty election? Why can't they, with knowledge of this date, set it so that problem doesn't arise.

THE CHAIRMAN: That is established in the charter.

MR. BROOKS: We are checking now on what date that is. We meant to do it before today.

THE CHAIRMAN: Any further question?

MRS. FREEDLANDER: For the record, I think Mr. Brooks said it was a primary. It was the general. The primary is in March.

MR. HAILE: I have a suggestion that we say Tuesday, June 6, 1967, for many reasons. If I can

get support for it, I think that day of the week should be put in there.

MR. SCANLAN: I agree.

THE CHAIRMAN: Accepted?

MR. SCANLAN: Yes.

THE CHAIRMAN: Any further question as to Section 1?

MR. BOND: The caveat ought to be expressed.

THE CHAIRMAN: That will be at the end. Section 2.

MR. SCANLAN: Section 2 prescribes qualifications of delegates and reads, of course, that to be eligible as a delegate to the Convention a person shall possess all of the qualifications for a seat in the House of Delegates of Maryland under the existing Constitution of Maryland, with the further provision that he may also be a minister or preacher of the Gospel, or of any religious creed or denomination. Preachers of the Gospel are not held constitutionally eligible to be members of the House of Delegates. They would be eligible to run and serve as a delegate to the

Constitutional Convention. I believe Mr. Hargrove made a suggestion in connection with Section 1 that we ought to make it clear he doesn't have to have residence requirement. I think that's academic now because having adopted Section 1 as the Committee recommended it, everybody who was over twenty-one and had lived in the county or legislative district in the case of Baltimore for the required period would possess the necessary qualifications for a seat in the House of Delegates. I don't think there is any need here to change the language as we have it now.

THE CHAIRMAN: What are the qualifications now that would be covered under Section 2?

MR. SCANLAN: Age.

MR. BROOKS: Section 9, Article 3, I believe.

MR. SCANLAN: Nine and 11, no minister or preacher of the Gospel would be barred.

THE CHAIRMAN: Would you state what you understand to be the qualifications that would be covered under Section 2 as drafted?

MR. SCANLAN: Extracting from Article 3,

Section 9 which is the provision of the Constitution which now prescribes eligibility in the Senate and House of Delegates, he has to be a resident, has to be a citizen of the State of Maryland, and he would have to have resided for three years next preceding the date of his election in the county or in the case of Baltimore City in the particular legislative district. He must also be twenty-one years of age at the time of his election. Also --

THE CHAIRMAN: That's it, isn't it?

MR. CASE: Members of the House or Senate couldn't qualify.

MR. SCANLAN: By giving up their seat.

MR. CASE: That is right, would have to resign their seat.

MR. SCANLAN: That is right.

THE CHAIRMAN: I am not sure whether they could do that because the disqualification is the term for which they are elected under the present Constitution.

MR. CASE: They wouldn't be holding any

office of profit or trust. That is the thing.

MR. SCANLAN: That is correct.

MRS. BOTHE: That's what I was going to ask. The question about holding an office of profit or trust or seat in the General Assembly, whether the Committee had resolved whether or not certain people holding various offices around the state would be eligible.

MR. SCANLAN: I believe we, not only the Committee, but the Commission wrestled with this specific problem. It was determined, I believe, an earlier Attorney General's opinion in connection with the prohibition --

MR. BROOKS: We dealt with this problem on General Assembly members and decided there was a prohibition in light of research done. We have not adequately determined at this point what other public officials can or cannot under the law be delegates.

MR. MILLER: Could we get an opinion from the Attoeney General?

THE CHAIRMAN: We had an informal opinion

from the Attorney General as to the members of the Legislature. It did not embrace other officers. The opinion was in all probability they would be barred. On that basis a bill was introduced to provide a constitutional amendment which would remove the bar. It was not passed.

MR. SAYRE: It seems to me we ought to request an opinion regarding members of any county council or board of supervisors on a local basis.

THE CHAIRMAN: I can't hear you.

MR. SAYRE: Wouldn't a member of a board of supervisors or county council be a civil office?

MR. MARTINEAU: I think there is no point in trying to discuss here any particular offices. There are probably more opinions of the Attorney General on this particular question relating to various offices over the years than on any other question. It would be impossible for the Attorney General to give any full range opinion detailing all offices that would be barred. If the problem comes up, you can probably find the answer in the opinions of the Attorney General

in years gone by. If not, if this is a particular problem, the question can always be put to the Attorney General.

MR. SAYRE: My question relates to people who might seem to be interested in running and they could be maybe members of a county council or could be a member of the State Central Committee of the Democratic or Republican Party.

MR. MARTINEAU: These questions have come up hundreds and hundreds of times. If anybody has a problem, the first thing to do is ask the lawyer to check the opinions of the Attorney General. If not, somebody can get a ruling.

THE CHAIRMAN: It is utterly impossible to answer categorically as to any office and say it is or isn't.

MR. SYKES: Wouldn't it be desirable to set out in Section 2 the qualifications mentioned in Article 3, Section 9, rather than to incorporate them by reference? Somebody may want to know if he is eligible. He finds the act. Then he has to go to a lawyer. There

are only just a couple of lines.

MR. SCANLAN: I think we adopted this language because it is the language that has been in all the bills,earlier bills convening convention of 1831, '64, '67, and in every piece of legislation that was introduced over the last twenty years to convene a constitutional convention. Only difference in language here is the exception in favor of the minister of the Gospel. I agree we could write it affirmatively as Mr. Sykes suggests. On the other hand, the publicity that would be attendant to the convening of this convention certainly will give full notice of the requirements of eligibility.

THE CHAIRMAN: It seems to me, this is behind my earlier questions, it would be highly desirable to have the bill answer all questions to the greatest possible extent and not require further explanation. If you provided it affirmatively here the qualifications are so simple that you would end up with a shorter section and would not have to have any special section as to minister of the Gospel, et cetera. It seems to

me the section could be made very explicit and very simple.

JUDGE ADKINS: Wouldn't you then eliminate these peripheral questions such as Bill Sayre has been raising as to whether other types of contact with the state would serve to disqualify?

MR. SCANLAN: I don't see how you would eliminate those. The problem there comes in that a fellow decides whether he wants to run, the question is is the office he now holds an office of public trust? I don't think we can eliminate that problem in particular cases no matter how we state these qualifications.

JUDGE ADKINS: Two questions whether that plus this, whether this office is an office of public trust.

MR. SCANLAN: This has been held by the Attorney General to be an office of public trust. There is an earlier opinion on the prohibition convention.

MRS. FREEDLANDER: It is probably oversight you did not put a citizen of Maryland in there.

MR. SCANLAN: That was not necessary because we incorporated by reference the qualifications for House of Delegates one of which is to be a citizen of the State of Maryland. If we did it Mr. Sykes' way or the way the Chairman seems to indicate would be preferable, we would have to state he be a citizen, that he resided, and be twenty-one.

MR. SYKES: I would move that the Committee be given the discretion to take care of the wording to rewrite Section 2 so as to provide for the qualifications affirmatively and set out explicitly the substance of Article 3, Section 9, eliminate the exception in the last clause, it won't be necessary, and not do it by incorporation by reference as the draft does.

THE CHAIRMAN: Is there a second?

MRS. FREEDLANDER: Second.

THE CHAIRMAN: Any discussion?

MR. BROOKS: One question. Would you incorporate also the prohibition,for instance, in Section 3, Article 3, Section 17, concerning double office holding in your list of qualifications in this?

MR. SYKES: I think in order, I don't think it would make any difference in fact because that has constitutional significance. To the extent the act was inconsistent with it the constitution would control. I do think it would probably be a desirable thing to make that statutory as well. So as to alert people who are interested in it to exactly what the situation is and they wouldn't have to look for the text beyond the single section here. They would still have to get some interpretation on doubtful questions but I think that is a very good suggestion.

THE CHAIRMAN: I think it poses problems because the limitation on office of profit is in two different sections and they are not identical. One is as to the legislative, effective for the term for which he is elected even though he resigns. I can't put my finger on the other, I think it is in the Declaration of Rights, I can't remember the article, it does not have that limitation as I recall it. Also you have the fact that it has been suggested that the existing provisions of the Constitution as to holding

of office are not applicable here because the Constitutional Convention is over and above the Constitution. This Commission and this Convention, for instance, is being called not pursuant to the provisions of the existing Constitution but in the exercise of the inherent power of the Legislature. It seems to me you would pose both drafting problems and other problems as well if you try to include in this section the constitutional limitations, whatever they may be.

MR. SYKES: I am satisfied to leave it as it was.

THE CHAIRMAN: Your motion would be that the Section be amended so as to provide that the qualifications should be citizens of Maryland, age twenty-one, resident of Maryland for three years and resident of the county or legislative district from which he is elected for one year.

MR. SYKES: Right.

THE CHAIRMAN: Any further discussion?

DR. JENKINS: Where does this leave the civil office of profit or trust?

THE CHAIRMAN: That means whatever effect the constitutional limitations have, they have. This still is subordinate to them if it is subordinate to them. Any further discussion? Ready for the question? Question arises on the motion to direct the Committee to rephrase Section 2 so as to spell out the qualifications of the delegate to the Constitutional Convention being citizenship in Maryland, age twenty-one, residence in the state for three years, residence in the county or legislative district for one year. Ready for the question? All those in favor, signify by saying aye, contrary, no. Chair is in doubt. Those in favor please signify by show of hands. Contrary. Motion carried thirteen to five. Any further questions on Section 2?

MR. MILLER: Mr. Chairman, I apologize for injecting this thought at this point because I didn't bring it up before this Committee of which I was a member. I am very happy with their report. But since I have been thinking the thing over, the thought comes to me that we might think about the fact

that there is nothing to prevent any crackpot that wants to get his name before the voters if he is a voter who is willing to spend $25 for filing. In some of our municipal governments where the elections are not partisan, therefore not subject to selection of candidates by political bodies, some of the city charters have a rule that a person to file for councilman from X district or whatever it may be, he must have signatures of X number of eligible voters on his petition to file. I don't know whether that is worthwhile but if we had such a provision for filing in addition to the $25, it might cut down some of the crackpots we are undoubtedly going to have appearing on the ballot. I just offer that suggestion belatedly because I didn't think of it when we were talking, when the Committee had its meetings.

MR. SCANLAN: I gather then if Congressman Miller's proposal is in the form of amendment, it would be, I think, it would fall in the section we are about to discuss, Section 3.

THE CHAIRMAN: I think so.

MR. MILLER: Maybe I spoke too early.

THE CHAIRMAN: Go ahead with Section 3.

MR. SCANLAN: Section 3 is the section that provides for the mechanical qualifications of filing. Each candidate required to pay a filing fee of $25, several Boards of Supervisors of Elections in the various subdivisions accept the filing of the candidates, regular office hours, period from the effective date of this act, we don't know what that will be, through May 1, 1967. Hopefully it could be fairly early in the legislative session or even if it came rather late, it would still give time for candidates to file. I believe that the session ends sometime in the very early part of April, the regular session. So candidates would at least have practically a full month to file and make up their minds to file.

The affidavit referred to there is the typical nonsubversive activity, affidavit otherwise required by state law. As Congressman Miller says, we did not, I think we did discuss the possibility of requiring nomination petitions but we never reached any

agreement about making that a further requirement of filing. The filing fee is modest enough although we feel setting it higher might deter someone really earnestly interested in serving in this Convention from filing yet $25 is a little more than a token filing fee.

I personally have no strong feeling against some minimum petitions being required if one thought that that would deter crackpots from running but crackpots can amass petitions, we do it all the time in Montgomery County. I don't know what real deterent that is on people seeking office just doing it --

MR. CASE: Was that a conscious use of that pronoun?

MR. CLAGETT: One of experience.

DR. JENKINS: Unless debate convinces me otherwise, I think this is a brilliant suggestion. It seems to me to have the result not only of eliminating the publicity seeker, but it would also serve to eliminate the straw man who might be put up by a political boss.

MRS. FREEDLANDER: No.

DR. JENKINS: If we could get the League of Women Voters, as somebody said, God bless them, behind some of these candidates and some other civil organizations, it might serve to get better quality of delegates than we would otherwise have.

THE CHAIRMAN: Any further discussion?

MR. HARGROVE: I don't know if it is covered further in the bill, but is there any provision for withdrawal of candidates? This might be a possibility, you get a large number --

THE CHAIRMAN: That is a different subject. Let's keep it to this one point at the moment, namely, whether you should require a petition. Any further discussion of that point?

MR. MARTINEAU: My only comment is if I thought the petition would do any good, I would be in favor of it but it seems inconceivable to me that any figure we might write in for signatures couldn't be gathered as easily by the crackpot as anybody else. I don't think it would do any good.

MR. SAYRE: How do you feel on this, Mr.

Eney?

THE CHAIRMAN: I can't imagine that any reasonable number of signatures you would require would do a bit of good. If you make the number low enough so that it is reasonable and feasible, I agree with comments that almost anybody could get that number of signatures. If you make it high enough to be meaningful, I think you are just putting obstacles in the way of other candidates.

MR. HARGROVE: I think in addition it would be a litigation breeder which we all know petitions have. I would think the elimination of any form of petition would best serve the purpose of this act.

THE CHAIRMAN: Mr. Miller, you did not make a motion. In light of discussion, do you want to?

MR. MILLER: I merely thought we ought to think about it. I am not sure I am for it.

THE CHAIRMAN: Any further comment with respect to Section 3?

MRS. BOTHE: I would make a motion that the

provision that the candidates have to comply with Section 15 of Article 85(A) not be included. I realize that Article 85(A) would require that the people take the oath but I don't see any reason why we have to rub it in in the act.

THE CHAIRMAN: Is there a second?

MR. SAYRE: Second.

MR.BOND: I would like to speak to that. I am not a subversive person but frankly I resent this. I just don't feel it has any place, I think it bemoans the whole Constitutional Convention to think that we would have to put this qualification in. Actually this article has been under attack in the courts. I don't know if it is before the Court of Appeals or not at this point. I don't think it is necessary.

MR. SCANLAN: The statute now requires it. Whether we put it in or not, it still has to be furnished. It seems to me if it is going to be required, it ought to be stated just from the point of view of making it clear. I don't want my defense of the Committee's language to be in any way suggesting that I am opposed

to the civil libertarian viewpoint just expressed by the charming lady on my right.

THE CHAIRMAN: Any further discussion?

MRS. BOTHE: I will make a comment.

THE CHAIRMAN: Any further discussion?

DR. MICHENER: I point out from the point of view of political theory you don't want subversive groups to change a government by force, you should give them a chance to do it by this process.

THE CHAIRMAN: Any further discussion?

MRS. BOTHE: I better leave it on Dr. Michener's remark.

THE CHAIRMAN: Ready for the question? The question arises on the motion to delete the last clause requiring the filing of an affidavit in accordance with Section 15 of Article 85(A) .

MR. SCANLAN: Could I say one more word? I hadn't anticipated this motion or this line of argument. We want this bill to get through the Legislature. I hate to invite unnecessary obstacles and give some of the members down there an opportunity

to oppose the bill because we have not prescribed the usual oath that is dear to the hearts of every one of them. Since it really doesn't make a great deal of difference, I see no harm in keeping it in. You just create the possible hazard that the passage of the bill will be that much harder.

MR. CLAGETT: I think that is quite an important point because we are getting labeled to some extent as a blue ribbon committee anyway and here is something that somebody can point to showing that we are left wing-right wing liberal or something other than what we are.

THE CHAIRMAN: Ready for the question? A vote aye is a vote in favor of deleting from the section the requirement of an affidavit in the form prescribed by Section 15 of Article 85(A). I take it that deletion does not eliminate the requirement. In other words, the motion is not,as I understand it, a motion to require the section to state affirmatively that the affidavit is not required.

MR. BOND: Let me speak to this one point.

THE CHAIRMAN: You have spoken. I was merely stating,as I understand the motion, it leaves the reference to the section out of the statute and would leave it subject to the section if it applies,otherwise not. In other words, I did not understand the motion to mean that this section should have an affirmative statement that the affidavit not be required.

MRS. BOTHE: That is correct.

THE CHAIRMAN: A vote aye is a vote in favor of deleting this reference from this section. All in favor, please signify by showing of hands. Contrary. Motion is lost, seven to twelve.

JUDGE ADKINS: May I raise a question? In addition to the question raised across the table, I would like to ask if any provision is made here for filling vacancies should they occur after the close of the time for filing and time of the election. It is not inconceivable that some smaller counties --

THE CHAIRMAN: There is a provision later.

JUDGE ADKINS: Okay.

MR. MARTINEAU: Not that.

MR. SCANLAN: Not to that point.

THE CHAIRMAN: You deal with vacancies.

MR. SCANLAN: We deal with vacancies but if you nominate 16 in my county, 16 file, somebody died or withdraws --

JUDGE ADKINS: After time for filing but before election.

MR. SCANLAN: That unlikely contingency has not been dealt with.

JUDGE ADKINS: It is not so unlikely in some of the smaller counties. It may be in an area such as yours but in some smaller counties where you have maybe one or two, you may just have only one or two to file. If anything happens to that man, that county would wind up without representation.

THE CHAIRMAN: Do you want to consider that further?

MR. SCANLAN: Yes, I think we can take care of that.

MR. HARGROVE: The other contingency where you have insufficient number of filings that is possible

with this type thing, it is conceivable you might not have. It wouldn't be Baltimore City, I am sure.

MR. SCANLAN: Could we come back to Judge Adkins' suggestion when we reach the question of filing vacancies later?

JUDGE ADKINS: I am perfectly willing to leave it with the Committee and not press the Commission's time.

THE CHAIRMAN: Let's suspend discussion of it and talk about it when we talk about vacancies generally.

MR. HARGROVE: My other point which was out of order at the time is probably in order now. Perhaps there should be some provision for a date when candidates can withdraw and I don't know whether the Committee has or has not considered refunds of the filing fee such as is present today in the filing for candidates to the House of Delegates. My thought on that is that perhaps if you don't give a refund, you probably give some serious consideration before filing. Then for many reasons people could withdraw. It would

make perhaps a more orderly election. It doesn't appear to be here. I think perhaps it should.

MR. SCANLAN: On the question of withdrawal later on, we provide for the applicability of the election laws generally. I believe that certainly the intention would be that the withdrawal situation would be covered by the usual period of time applicable in a regular election. I don't know --

MR. HARGROVE: I would think the election laws, if you read the various election laws, it probably could not do it unless you specifically state it. I think each has periods of time, if we use these dates, you are going to be in trouble.

THE CHAIRMAN: Will the Committee take it into consideration?

MR. SCANLAN: Yes.

THE CHAIRMAN: Any further comment on Section 3?

MR. MARTINEAU: One thing that I didn't catch before, I am not sure whether I mentioned this in the Committee or not. Section 3 requires apparently

the Board of Election Supervisors to be open every day. In many counties they are not. I would think they ought to be, there should be the phrase on top of page 3, on every week day, should be deleted and phrase ought to be during regular office hours.

JUDGE ADKINS: That is good.

MR. SCANLAN: I didn't realize that.

THE CHAIRMAN: What about the opposite end of that? At this time of the year, would you have a situation where the number of days they would be open in this limited period of one month would be too few?

MR. MARTINEAU: I am not sure. My own particular county is open every Saturday. I amnot sure what the situation is in others.

THE CHAIRMAN: You wouldn't want the third Saturday every month?

MR. MARTINEAU: Should be at least once a week. We should check that to make sure there is no gap.

THE CHAIRMAN: Any further comment with

respect to Section 3? Section 4.

MR. SCANLAN: Section 4 is the section providing for the publication procedures by the Board of Election Supervisors, requires them to give public notice by advertisement of the name of the persons who filed. In Baltimore City the list would be subdivided according to the legislative district in which the candidates filed. And the usual requirement that the notice be in two newspapers, if there are two newspapers in the particular subdivision. In Baltimore there is also the requirement that a complete list of candidates in all legislative districts be published in all daily newspapers in that city. Then during the period of two weeks prior to election each board by public advertisement should give notice of list of all polling places in the county or city as the case may be.

THE CHAIRMAN: Any question?

DR. MICHENER: Without having a partisan election trying to get people that are very well qualified, would it be advisable to provide for publication of, say, a statement of a hundred words by the person of what he

considers qualifications for the post?

JUDGE ADKINS: This will be expensive enough.

MR. SCANLAN: I didn't hear that and I have the feeling I didn't want to hear it. What did you say?

THE CHAIRMAN: Dr. Michener asked whether you think or the Committee thinks it would be desirable to have an added requirement that each candidate publish a statement of perhaps a hundred words in length stating his qualifications.

MR. SCANLAN: No.

THE CHAIRMAN: Any further question? Any further comment? Section 5?

MR. SCANLAN: Section 5 deals with the mechanics of election. I might as well read this. Section 5 reads: And be it further enacted, that the names of all candidates for delegates to the said Convention in each county and in each legislative district of Baltimore City shall be printed on a paper ballot or on the ballot labels for voting machines, according to the current usage of the several political

political subdivisions, respectively. The names of all candidates filing for election as delegates to the Convention shall be typed on similarly prepared ballots and during regular office hours on May 2, 1967, in public, shall be drawn by lot by the chairman of each Board of Election Supervisors, or his designee, one at a time, and the names of these candidates shall be arranged on the ballots or ballot labels in the numerical order in which they are drawn by lot, as aforesaid, without any party designation or other description thereafter. Notwithstanding anything to the contrary in any of the election laws of this State, each Board of Supervisors of Elections shall have the power for this special election and for the referendum on the adoption of any new constitution, or on any change or amendments to the existing Constitution, provided for hereinbelow, to determine the number of judges and clerks of the election necessary to conduct the election and referendum in an efficient and orderly manner, and likewise the power to determine the compensation paid at the November election, 1966.

In other words, here we are eliminating the listing of candidates alphabetically as is done now on the ballots as the Committee report indicates, I think, approved by the Commission before this is an attempt to eliminate any advantage that sometimes adheres in having a name beginning with A,B,or C, and especially, I think, it is especially important that this type provision be in this election which is a different type election. We are trying to get best qualified people but some best qualified people might not be too well known. Whereas if names are listed alphabetically, it would be possible to have a man successful in the election with no qualifications other than his name began with A. As you recall, you have already approved our recommendation that candidates run from the county at large so the danger of advantage from alphabetical listing would be especially great. I think actually the suggestion of the Committee here might be, one, the legislature may consider for elections generally. There is no reason we have to have alphabetical arrangement. In this type election, we think it especially meritorious

to have this type provision.

MR. HARGROVE: I might suggest that some provision should be made for drawing because this just leaves it to the Supervisor of Elections to make a drawing. I think it should be notification to candidates and a drawing in some place they can attend.

MR. SCANLAN: It is required to be in public.

MR. HARGROVE: That means nothing. I think notification should be given to the candidates as to the time and place of drawing because a public drawing is not much when you don't have anybody there but the Supervisor of Elections and a few people who operate his office. You must remember these offices are political offices and in Baltimore City particularly the placing of names on the ballot is an art. I think it would be the same thing here.

MR. SCANLAN: A day certain is specified, May 2. It has to be a public drawing so the candidates know the day, they know the place, and I assume would be there.

THE CHAIRMAN: Wouldn't it be simple enough to specify a time?

MR. SCANLAN: Yes, would that satisfy, Mr. Hargrove?

MR. HARGROVE: I think it would because these election boys are wonderful.

THE CHAIRMAN: High noon is suggested.

MRS. BOTHE: I guess I have an interest in this having gone from "L" to "B." There is some disadvantage to the system because a number of voters look on the machine for the name of those whom they want to vote for alphabetically rather than by Line 1-G or whatever other specifications. Where there are, if there are a large number of contenders, I think it will make it more difficult for a voter to find the people he intends to vote for.

MR. SCANLAN: Just want to break them of the bad habit of voting alphabetically.

MR. BOND: Somebody might die between the time of filing and time of the drawing of lots. Second it isn't the alphabet so important but top and bottom

line. Fifty people running looking for somebody if it is not alphabetical it is rough.

DR. BURDETTE: I think the way this could be done is to provide legislation that each candidate's name so far as possible appear an equal number of times in each position among the candidates. This is very much more easily done in case of paper ballots and is required by law in some states but this does not have the disadvantage of a lottery, it gives everybody an equal chance.

MR. SCANLAN: It enormously complicates the task. In one precinct, a man will appear in Line 1 in another he will appear on Line 2. But the problem with that is some precincts are much larger than others and it is better to have your name on Line 1 in a precinct with 3000 voters than a precinct with 800. It raises all sorts of other complications. There has to be a limit to these things if govemment is to go on as Justice Holmes put it one time.

DR. BURDETTE: The impractical thing is if you thinkthis is a serious problem, you better pick

out qualified candidates who have names with beginning parts of the alphabet. I don't feel strongly about it.

THE CHAIRMAN: Any further comment?

DR. BURDETTE: It is about a 5 per cent difference?

DR. MICHENER: Line 6 where the reference is to voting machines, paper ballots to be chosen according to current usage, this would prohibit Baltimore City or someone from using paper ballots to take care of the eventuality spoken of earlier, voting machines might be tied up.

MR. SCANLAN: I think the answer is if it turns out that the concern Mr. Bond expressed earlier Baltimore City election has these machines tied up because of the canvass, they couldn't have machines ready on June 6, having a city general election in early May, I would assume then the Legislature,when this bill goes before it, by that time we will know that, would move the date of election instead of June 6, move it to the middle of June. That can be accommodated. I don't see any reason for changing the current usage of

machines or paper ballots as may now prevail in a particular subdivision for this election.

MR. GENTRY: You are taken care of. If the machines are tied up, current usage would be to go to paper ballots.

THE CHAIRMAN: Any further discussion?

MRS. BOTHE: On second thought, I move that the provisions in this Section 5 for a drawing for position on the ballot be deleted and in their stead the normal means of placing the names of candidates on the ballot be employed, alphabetical order.

THE CHAIRMAN: Is there a second?

DR. BURDETTE: Second.

THE CHAIRMAN: Do you want to discuss it further?

MRS. BOTHE: I really insist I am not doing this for selfish reasons. I believe somebody said I think it is true that the position of the name on the ballot, maybe they ought to have women first or something like that, the position of the name, the alphabetical position is not necessarily the important

thing. It is actually the position on the line. There are many instances where a person with a name high in the alphabet is in a disadvantageous position. I am thinking more from the standpoint of the voter because I do think that the voter is going to seek out alphabetically those people he is determined to vote for rather than by number. I am thinking also of the name, the same situation which is likely to crop up. It is much easier for a voter where some politician throws in a contender of the similar name. If you have the sprinkled system, he will be searching for anybody named Case and could just as well choose the wrong one. I really feel that this is going to add a great deal of confusion and it has never been done before as far as I know. The act of drawing itself may lead to a lot of ill feeling. I don't feel that it affords as much protection as it does confusion.

THE CHAIRMAN: Any further discussion? Mr. Scanlan?

MR. SCANLAN: I gave the reasons the Committee recommends.

MR. CASE: What are they again? Mrs. Bothe's remarks make sense.

MR. SCANLAN: This is to be an at large election except in the City of Baltimore. Which means you will have a fair amount of candidates running. We are all familiar with the alphabetical advantage that can be gained by candidates whose names begin with A and B and C. That advantage isn't so great in an election where the candidates running are well known having been elected to public office or active in politics. Even there we have seen especially in Baltimore the alphabetical game played with considerable success. It seems to us in an election of this sort the danger of advantage from alphabetical position is even greater. For that reason we have made this recommendation.

It is a recommendation that is used in many elections in many cities in many states even though it may not have been done in Maryland before. It is not an innovation in that sense. There are many precedents for this or versions of it. I don't see where the drawing, the language is very clear, picks out

a name, first one out of the hat is Line 1 and so on. I don't think it will generate any confusion. In Baltimore where the confusion might be the greatest we have,the fact that it is divided into legislative districts and perhaps you wouldn't have a great bulk of candidates.

THE CHAIRMAN: Any further discussion?

MR. CLAGETT: Having been made aware of the advantage of "C," I believe I am going to withdraw from my position on the Committee and adopt another one. Not to pun but being a "C" and seeing two "B's" I think I will go along with them.

THE CHAIRMAN: Any further discussion? Ready for the question? The question arises as to whether or not we have to weight the votes of those whose names are in the last half of the alphabet.

JUDGE ADKINS: Are we disqualified in the first half?

MR. MARTINEAU: We ought to have a roll call.

MR. CASE: I am definitely voting in favor

of it now that you said that.

THE CHAIRMAN: A vote aye is a vote in favor of rewriting this section so as to delete the provisions requiring the drawing of names by lot for position on the ballot and leave it to the present law which would require the names to be arranged in alphabetical order. Ready for the question? All those in favor, please signify by show of hands. Contrary. Motion is lost four to eleven.

MR. SCANLAN: We won't let the record show three B's and one C.

THE CHAIRMAN: Any further question or comment as to Section 5?

We move to Section 6.

MR. SCANLAN: Section 6 provides for judges to count and canvass the ballots and make applicable except as otherwise provided in the bill for the general election laws of the state. The canvassing and then the forwarding of results of the Board of StateCanvassers and certifying of the winners by the Governor and all the other election laws that are

applicable. They are incorporated by reference to the provisions of this section.

MR. BOND: I can bring up the question of death. We had two deaths between election day and taking office in the county. Can't do it by State Central Committee.

MR. SCANLAN: The problem of disability by death or whatever the reason between election and convening of the convention we do deal with later. We have not dealt with the possibility of vacancy occurring after the candidates file, equal number for office but election has not been held and someone dies, which I believe was Judge Adkins' question. That we have not dealt with precisely. Could we deal with that when we deal with the subject of vacancies generally?

THE CHAIRMAN: Any further question as to Section 6? Section 7.

MR. SCANLAN: Here is the Section containing usual provisions concerning canvassing and certifying of votes. It also contains the provisions relating to vacancies. I might read that beginning a little below the

middle of the line on Page 7 of the bill. After providing that the convention shall determine the validity of the election qualifications of its members, if until the time that the convention assembles, there is any vacancy in the delegation representing any county or legislative district, the governor shall appoint a person who shall possess the qualifications set by this act for delegates to the Constitutional Convention to fill the vacancy.

That is up to the moment the Convention formally convenes September 2, 1967. Following election until the actual formal convening on September 11, 1967, the Governor would have the power to appoint a person as delegate who possessed the necessary qualifications. Then the language goes on, after the Convention assembles, if a vacancy in a delegation to the Convention exists or occurs, then the Convention shall fill the vacancy.

This is recognized once the Convention is convened -- I don't like to use the power unto itself -- but it is representatives of the people assembled and

the power to determine who shall sit in that body should be vested in the Convention if there is a vacancy. We drew the distinction of a vacancy occurring before the collective representatives of the people gathered in Convention and vacancy afterwards.

DR. BURDETTE: I should like to suggest to the Committee that at bottom of Page 7 where the Convention fills the vacancy that the Convention fill the vacancy from persons who possess the qualifications to have been elected.

MR. SCANLAN: I would regard that as a limitation on the power of the Convention.

DR. BURDETTE: My reason is I think they should come from the counties where they were elected rather than some other point of the state.

MR. SCANLAN: In point of fact it probably would happen but on the other hand, I think that we should be very careful in this act in restricting the Convention's powers.

JUDGE ADKINS: It doesn't seem to be unreasonable to restrict them to the point of requiring

that the vacancy be filled from among those persons who otherwise would have been represented.

MR. SAYRE: I think that provision should be as provided in accordance with the rules of the Convention.

THE CHAIRMAN: Since you are getting to this much discussion, let's get a motion. Do you desire to make a motion, Dr. Burdette?

DR. BURDETTE: I won't move the exact language but I move that the Convention fill the vacancy from persons eligible in the county or district.

THE CHAIRMAN: Having the residence qualifications?

DR. BURDETTE: Yes.

JUDGE ADKINS: Second.

THE CHAIRMAN: Do you wish to say anything further to it, Dr. Burdette?

DR. BURDETTE: Some counties will have very small representation anyhow and it might be overlooked. It would somewhat impair the confidence of the people in the results of the Convention if there were

untoward actions.

MR. MARTINEAU: I think this problem is answered by Section 2 saying to be eligible as a delegate to the Convention a person shall possess X qualifications. I think that this would necessarily apply to anybody whom the Governor would appoint or who would be elected by the Convention.

DR. BURDETTE: In that case you need eliminate the statement of the Governor. If you put it in the Governor and not the Convention, the implication is the Convention is not bound.

MR. CASE: I am not sure it does with respect to the Governor because the word qualification is referring back to Section 2 doesn't necessarily mean --

THE CHAIRMAN: Section 2 is rewritten.

MR. CASE: I understand it is rewritten but it doesn't say anything about where the man comes from. That is contained in an entirely different act.

THE CHAIRMAN: That's what I mean, Section 2 as rewritten today would provide that he have a year's residence in the district from which he is elected.

MR. CASE: Can somebody read it?

THE CHAIRMAN: The substance of it was that Section 2 be rephrased to provide to be qualified a man be a resident of the state, citizen of the state, have been a resident of the state for three years and be a resident of the district from which he is elected for one year.

MR. CASE: But he could be all of those things and still a man, for example, in Baltimore County delegation could die and the Governor under this could appoint somebody from Prince Georges County who would have all those things and still fill the vacancy. There is nothing in this that says he has to appoint from the county where the dead man happened to represent. I think this is a fatal weakness. I agree with Dr. Burdette and I think it is also implicit in the Governor's right to appoint as well as the Convention. It ought to be made abundantly clear they have to pick them from the same political subdivision the deceased represented.

MR. SCANLAN: In view of the fact the

representation provided a county is the representation to which it is entitled in the House of Delegates by statute, if he were to appoint a man from Prince Georges to fill a vacancy in the Baltimore County delegation to the Convention, he would have in effect violated the statute. He would be giving Prince Georges representation to which by law it is not entitled.

MR. CASE: He could delegate them as a representative of Baltimore County. What harm is done by putting it in? You got a lot of arguments, some good, maybe some bum, the way it is written. All you have to do is clarify it, it seems to me to be perfectly reasonable.

MR. SCANLAN: It is the intention that be done. If there is doubt about it, it would be wise --

THE CHAIRMAN: I didn't understand you. Is it your intention to require the Convention as well as the Governor to select replacements from the same county or legislative district?

MR. SCANLAN: I would think that that probably

was our intention that the Convention would do it. It seemed to us unnecessary to make that express but in view of the doubts that have been expressed --

THE CHAIRMAN: I see no point in submitting the motion because that is your intention and the language be changed to carry it out.

DR. JENKINS: I have a motion. In order to remove the possibility of political pressure on the Governor, whoever he may be, I would prefer that the Convention should fill all vacancies. I move, therefore, that we delete beginning with the eighth line from the bottom the term beginning the Governor shall appoint a person who shall possess the qualifications set by this act for delegates to the Constitutional Convention to fill the vacancy. After the Convention assembles, if a vacancy in a delegation to the Convention exists or occurs -- this would then read if until the time the Convention assembles there is any vacancy in the delegation representing any county or legislative district -- jump to the bottom line -- then the Convention shall fill the vacancy from a resident of said county or

legislative district.

THE CHAIRMAN: Is there a second?

MRS. BOTHE: Second.

THE CHAIRMAN: Any further discussion?

DR. JENKINS: None.

MRS. BOTHE: I ask Dr. Jenkins if we couldn't just simply delete all that and leave in the last phrase if a vacancy in a delegation to the Convention exists or occurs, the Convention shall fill the vacancy.

THE CHAIRMAN: I take it, Dr.Jenkins is not concerned with the precise language.

DR. JENKINS: It should be from the same district.

MRS. BOTHE: Add to that from the district from which the vacancy occurs.

MR. MARTINEAU: The one difficulty with Dr. Jenkins' motion would be that I believe the act contemplates there is going to be a great deal of activity of the Convention before it officially convenes. Since the man couldn't be elected until the Convention

actually convenes, that political subdivision would be unrepresented for that entire period.

DR. JENKINS: I realize there are certain disadvantages here. I assume there would be very few such vacancies. That the advantages it seems to me would override the disadvantages of which you speak.

MR. CLAGETT: I have the same question that Mr. Martineau raised and he pretty well covered it.

THE CHAIRMAN: Any further discussion?

MR. CASE: Dr. Jenkins, what would happen under your proposal if all the delegates were going down to Annapolis on Ritchie Highway by bus and all of a sudden somebody dropped a bomb on them and killed them all or two-thirds of them. There wouldn't be a Convention, you couldn't get it going again.

MR. CLAGETT: Had they signed the affidavit.

JUDGE ADKINS: I have this question. In practical fact how is a Convention going to choose a delegate? Is it the presiding officer? Is it going to be the remaining members of the delegation from the area involved? I just don't conceive quite how a

Convention is going to appoint a delegate.

THE CHAIRMAN: I assume they would provide some mechanics to do this by their rules, perhaps a committee to nominate and then elect. But in any event, their rules would have to govern it.

Any further discussion?

MRS. FREEDLANDER: Instead of eliminating all those lines that Dr. Jenkins suggested in order to fulfill the proposal Dr. Burdette presents, why could we not simply say at the end of this paragraph all vacancies should be filled from the area in which a vacancy occurs.

THE CHAIRMAN: Dr. Jenkins isn't concerned with language. We can straighten out the language later. I think he is concerned only with the point of policy involved which is that all vacancies be filled by the Convention.

DR. JENKINS: The Convention.

MR. SCANLAN: On that specific point the Committee indicated its willingness to put the appropriate language to put in expressly a protection we thought was

implicit.

THE CHAIRMAN: Any further discussion? Ready for the question? Question arises on the motion to amend Section 7 so as to provide that the Constitutional Convention fills all vacancies after the election whether occurring before the Convention assembles or thereafter. A vote aye is a vote in favor of that principle. Are you ready? All those in favor, please signify by show of hands. Contrary. Motion is lost five to fifteen.

MR. SCANLAN: I have a comment at this point with respect to the matter that Judge Adkins raised. That is the vacancy arising from the fact that in a county just an equal number of names were filed and then prior to the election someone dies. Very frankly, we did not consider that hypothetical situation. But I think it a reasonable interpretation of the language now written could be used to cover it. In other words, someone died. Too late to take the name off the machine or for someone else to file. A county instead of having two delegates only elects one. This could be construed to permit the Governor to fill that

vacancy at the time or to not fill it and let the Convention fill it. More likely he would fill it. I don't know if this satisfies you or second whether you agree the language can be construed to cover that situation even though we admit we didn't have it in mind when we wrote the language.

JUDGE ADKINS: It might in case of death. I think the more interesting question might arise if a candidate withdrew within the general election laws after it was too late to file and a vacancy was thus created. You can withdraw after the time for filing has ceased. If the candidate withdrew, it would then be under the existing rules,as I understand it, the governing body of the party can fill the vacancy thus created. There would be no provision for that here. I see no answer to it unless you permit a candidate to then file by virtue of getting a petition of 200 names or some such thing.

THE CHAIRMAN: Isn't that a matter the Committee have to study further.

MR. SCANLAN: We will have to take a look at

it.

MR. MILLER: I have one thought where the weakness in our present set-up is and I get back to the crackpot. If Joe Doakes is endorsed by all of the people in his district, say, a one-man district, and nobody runs against him except a crackpot and then he dies, those things happen with 142 people. The crackpot, there is no vacancy, therefore the crackpot becomes automatically the delegate from that particular district. It seems to me that is a weakness because while I am heartily in favor of this being a non-partisan election, I think it would be a mistake for somebody to luck in just because there might be none running against Joe Doakes and he dies but this crackpot goes in.

THE CHAIRMAN: Mr. Scanlan, can you consider that in connection with the matter you are considering? Do you follow his point?

MR. SCANLAN: I believe so.

THE CHAIRMAN: Take a district with three candidates, four filed. You think that the three who

are really qualified will be elected but one of those three dies. The fourth you don't want elected is automatically elected because he is bound to be among those chosen.

I think we have all probably had it so far as this discussion is concerned this afternoon and we might adjourn.

(The Commission adjourned at 6:10 p.m.)

THE CHAIRMAN: Let's resume consideration of the Sixth Report of the Committee on Convention Procedures. Section 7. Is there any further comment? Section 8?

MR. SCANLAN: Section 8 provides for a number of things. First is the place of convention which, of course, will be the City of Annapolis. I believe the Commission previously approved the selection of that site for historical as well as practical reasons, obviously the prime choice with all due deference to my friends and associates from Baltimore.

The day selected for the Convention to

convene is September 12. I believe this is one of the earliest dates under the legislation that the Legislature passed that we could have. Originally this Committee had recommended July 4 but in view of the action taken at the last session of the Legislature, it can be no earlier than September --

THE CHAIRMAN: The act actually provides September 12 now. One act said no earlier than September 1, '67.

MR. SCANLAN: That is right, the second act actually prescribed Defender's Day which at least has historical significance and is not much more than 100 years and one month, little less than one month, from the day the last Constitutional Convention adjourned.

We have provided that it shall continue in session for no longer than four months. Again I believe that time period was approved by this Commission at a previous meeting. There was some feeling on the Committee that three months would be enough but if hearings have to be held, perhaps four months is required. In any event, in order to put a cutoff date on it, we

have limited it to four months. The Michigan experience was that, as I recall, they had a salary of a thousand dollars a month up to a maximum of $7500. That Convention lasted exactly seven and a half months. But we have put a limitation on it so the delegates who do run and are elected will know just how much time is involved and can order their personal affairs accordingly and will not spend forever in endless debate about things.

There is the provision, of course, that the Governor at least five days before the formal convening date will proclaim the date and advise everybody including the public. We come to a provision that I don't believe has been discussed with this Commission before. I now read from Line 11, the Governor shall convene the Convention prior to September 12, 1967, for the purpose of the election of officers for the organization of the Convention and its committees, for the selection of the members of the various committees, and their chairmen and for the adoption of the rules of procedure to be followed by the Convention. It was the feeling upon the part of the Committee and others

that it would be wise to utilize the period between June, the date of election of the delegates, and September, to get ready for the Convention so that the Convention wouldn't be obliged to spend perhaps as much as its first two or three weeks in organizing itself. Under the provisions of the bill, as I just stated them, the Governor could assemble the Convention not in formal session but could assemble the Convention for the purposes of drawing up Committees, for the purposes of drafting their rules of procedure, and selecting their various committees. So when September 12, 1967, rolled around, the Convention would be able to get off promptly on its important business, rather than consuming rather precious time in organizing itself.

Going on in the bill, we provide that the President of the Senate of Maryland, of the State Senate, shall attend upon the initial meeting of the Convention at the appointed hour and shall act as Chairman of the Convention until it shall be organized by the election of a temporary chairman. Hopefully if the delegates have met under the Governor's call in the

summer, they will have already selected a temporary chairman and the President of the Senate of Maryland, after calling the roll, can return home.

We also provide until the Convention shall have adopted its rules of procedure, it shall observe Roberts Rules of Order. I believe, of course, the Convention should be the judge of what rules it wants to have, whether it wants to fashion special rules, whether it wants to adopt the rules of the House of Delegates and State Senate of Maryland, or House of Representatives, whatever set of rules it wants to adopt it can. But until it reaches that point, it seemed to the Committee a wise thing to have some specific standard of organizational procedure and rules applicable. The one that seemed the simplest and the one that probably most people are most familiar with, of course, is Roberts Rules of Order.

I believe that is the end of that section.

THE CHAIRMAN: Are there any questions?

DR. MICHENER: After the Convention convenes, it shall continue in sesssion for no longer than four months

thereafter? This runs across the holidays, end of the year. Are you talking about four calendar months or four months in session? Wouldn't it be clearer if you put a date by which it had to adjourn, January 12 would be four months from the date.

MR. SCANLAN: That is intended. Would the word calendar coming between four and months meet your point?

DR. MICHENER: Yes, or you could say it shall adjourn by --

THE CHAIRMAN: Dr. Michener's suggestion is to say it shall continue in session no later than January 12, 1968.

MR. SCANLAN: That is all right. That was intended and seems to be a little more clear. I think our Committee would accept that.

MR. GENTRY: If you remember, there was considerable sentiment for a provision that the length of the meeting be three months, a one-month extension permissible. I think to use, I myself would prefer to stick with the four month rather than a day limitation

because that would make it all the more appealable or what have you, to continue for the full length of time until January 12 whereas here by using four months as an absolute, even though ultimately you might get the same result, I think, there would be more incentive to adjourn earlier if finished.

MR. SCANLAN: I am persuaded by Mr. Gentry's remarks because there was considerable debate in the Committee about whether it should be three or four months and there was some feeling it should be three with the right to extend itself a month if it wanted to but finally we gave in and selected the four-month period hoping that it would be less than that.

I would like to suggest that the word calendar between the word four and months would accommodate Dr. Michener's suggestion.

THE CHAIRMAN: I would suggest to you that creates confusion because strictly a calendar month means a full calendar month of thirty days and that might mean four full months in addition to part of the month. You could do it by saying no longer than 120

calendar days.

MR. CLAGETT: Couldn't we say shall continue in session for no longer than three months, in session for three months, but shall adjourn not later than January 12, 1968?

THE CHAIRMAN: It could but I don't believe it would be less confusing. May I make this suggestion? I don't think we want to debate the language. The Committee knows what is desired. If they will rephrase the language to accomplish the purpose -- is there any other question on Section 8?

MR. SAYRE: In regard to Roberts Rules of Order, shouldn't we refer to the edition probably? There is another, something similar? Maybe we can reserve judgment.

MR. SCANLAN: The imposition of Roberts Rules --

MR. SAYRE: Third Edition or whatever.

MR. SCANLAN: I would assume it would mean the one that was currently in effect, the latest edition, of course. Anything earlier than the latest edition

does not constitute Roberts Rules of Order. This is only for the period when they are organizing. Once they organize, they can adopt any rules they want. Which brings us to another problem.

THE CHAIRMAN: Any further questions?

MR. GENTRY: Just one short one. If you feel that the Governor's right to convene early is important, be careful which draft you use because the one I followed says the Governor may convene and the appendix draft says shall and the other says may.

THE CHAIRMAN: The appendix draft is the one to be used. The other is for the Committee's use.

MRS. BOTHE: I would move the amendment in the event they don't have a Constitution within four months that the recommendations of the Commission are automatically adopted.

MR. CLAGETT: Let's all second that one.

MR. GENTRY: Why wait four months?

THE CHAIRMAN: Any further questions? I would like to ask a question. Under this set-up you would in effect have two temporary chairmen. I wonder

why. You will have the President of the Senate acting as temporary chairman and then elect a temporary chairman solely to preside to elect a President.

MR. SCANLAN: I don't think the President of the Senate will be the temporary chairman.

THE CHAIRMAN: He is not so named but he is in fact the temporary chairman.

MR. SCANLAN: His function is at the appointed hour to call the roll and then --

THE CHAIRMAN: Shall act as Chairman of the Convention until it shall be organized. My point is since I assume in this situation it is unlike a political convention, you aren't expecting a keynote speech or anything of the sort, the only function of the temporary chairman will be to preside until the President is elected.

MR. SCANLAN: You are right. You are suggesting we eliminate the words temporary presiding Chairman.

THE CHAIRMAN: I would suggest you say President instead of Chairman because I think the

presiding officer of a Constitutional Convention in Maryland at least has usually been referred to as President.

MR. SCANLAN: We will accept the Chairman's suggestion on that. We will eliminate the word temporary and change the word Chairman to President. Unless it meets with some objection.

THE CHAIRMAN: Is there any objection? In other words, it would be that the President of the Senate shall attend upon the initial meeting of the Convention at the appointed hour and shall have the roll of the elected delegates called and shall act as chairman of the Convention until it shall be organized by the election of a president.

Is there any further question about the section?

DR. MICHENER: Technically election of a Chairman doesn't organize the Convention, does it? It takes more than that.

MR. HARGROVE: It will be organized before that.

THE CHAIRMAN: I take it you don't need the word organized. You can say until it shall have elected a President.

MR. SCANLAN: Let's say that.

DR. JENKINS: What happens in the event they cannot get through with the Constitution in four months? After all, this Commission is slightly behind schedule. Is there any recourse for legislative action or should there be --

MR. SCANLAN: I think in that case unfortunately the Legislature will not be in session.

MR. CLAGETT: They could call a special session.

MR. SCANLAN: Yes, by providing the Convention can stay two more months.

DR. JENKINS: You can always cut off the payroll.

MR. SCANLAN: This is a debatable question. There are some who feel the Convention has practically unlimited powers and once having convened can keep itself in session so long as it wants.

MR. HOFF: It can't levy taxes and pay its own salary. There is an incentive to cut it off.

MR. SCANLAN: Yes, the Michigan experience suggests when the cash runs out, the convention goes home.

MR. CLAGETT: The practical answer is we will do just as we are doing now. You meet at night until you get through.

THE CHAIRMAN: Any further question?

MR. MILLER: The Convention could continue in session and also continue $50 per diem.

THE CHAIRMAN: I think it is generally thought they would have no power to impose taxes.

MR. MILLER: In Section 9 we say payment of $50 for each day of actual attendance.

MR. SCANLAN: That's also subject to the four-month limitation of Section 8.

MR. MILLER: It doesn't say so.

THE CHAIRMAN: Wait until we come to Section 9. Any further questions on Section 8?

MR. MINDEL: I suggest we call him the presiding officer instead of President. Might refer to

him as Chairman rather than President. I don't know if you have a President of a Convention.

THE CHAIRMAN: Traditionally in Maryland and, I believe, quite generally he is referred to as the President.

MR. MARTINEAU: It is signed at the end.

THE CHAIRMAN: In '67 I know it was and I think it was true in the earlier ones also. Any further questions on 8? Section 9.

MR. SCANLAN: First part of Section 9 deals with the compensation to be paid to the delegates. I believe this Commission has approved the Committee's recommendation that the delegates to the Constitutional Convention shall receive a per diem payment of $50 for each day's actual attendance upon the sessions of the Convention or meetings of authorized Committees or Subcommittees thereof. I believe that per diem payment, no other payment, no mileage or travel allowance, other types of expense allowance, corresponds, I thought, almost identical to what the average compensation of a member of the House of Delegates gets but, I believe,

it is about $10 a day short under that. In any event, it was something that the Commission approved previously.

While it is not a large amount at least it is respectable. Most of the people we hope that are going to this convention won't be going for the compensation they expect to receive. Many of them, of course, will lose money by attending giving up their businesses, their professions, or occupations, whatever they are doing. $50 per diem payment seems modest enough.

The second part of Section 9 authorizes the Convention to appoint a permanent secretary, parliamentarian, research staff, and such clerks, stenographers, and employees as it may deem necessary to the efficient conduct of its business, all of whom shall receive such compensation as may be fixed by the Convention. The Convention may authorize such other expenditures as seem to it desirable for its work. It may arrange with the state comptroller for the details of making expenditures, but it shall not authorize total expenditures in excess of those provided in the

budget for its expenses.

In any event, the statute provides it shall not authorize total expenditures in excess of those provided in the budget for its expenses. Obviously the Legislature will have to appropriate funds for the Convention and these appropriations under this provision could not be exceeded by expenditures incurred under the authority of the Convention.

MR. BOND: I raise the question about appropriations. In the present Constitution there is provision for paying the Legislators. I am concerned about that. Take an extreme case. Suppose the Governor would not put in his budget moneys to carry on and provide for the Constitutional Convention and this law is passed as is. Is there any way or have you considered how it would be a self-starter or how do we get the money to provide not for election but the actual carrying on of the Convention?

MR. SCANLAN: Two ways. One, would be included in the budget or, two, it would be the subject matter of a supplemental appropriation bill.

MR. BOND: Should we not prepare such an approach?

THE CHAIRMAN: We have already taken up with the present Governor the question of starting the preliminary discussions to include in the budget which is now in process of preparation an amount for the next Convention. We told him we would give him a more definite figure later but at the moment suggested to him that he use the sum of $1,000,000. He indicated that the uniform practice has been and undoubtedly will be that the Bureau of the Budget will proceed in the usual course with preparation of the budget which means getting the requests of the various departments and so forth. This will be one of the items.

No final action will be taken. The day after the election the Governor elect moves in in this area and the Budget Bureau then begins reporting to him because it will be his budget.

If the Governor, whoever he may be, Governor elect, should decide not to put an appropriation into the budget, I don't believe there is any means by which

you could get funds out of the State Treasury to pay for the Convention except by means of a supplementary appropriation bill. We do not anticipate there will be any difficulty.

MR. CLAGETT: Does that one million dollars include the $750,000?

THE CHAIRMAN: It does not. We told him that is a separate problem. I cut you off before you finished. You mean $750,000 cost of election?

MR. CLAGETT: I am aware you were aware of what I was asking.

THE CHAIRMAN: Unfortunately the record won't show that. Any further questions on Section 9? I had a question. Is it sufficiently clear, do you think that the $50 per diem payment is to be not only compensation but reimbursement for expenses? What concerns me is whether there may be some general provision of state law authorizing state employees or officers to be reimbursed for out of pocket expenses, travel or whatnot. I am not sure whether there is or isn't such a law but if there were such a law, I would

be afraid that maybe this would be construed as compensation and that the application of that law to permit reimbursement of expenses would be in addition.

MR. SCANLAN: Mr. Chairman, like yourself, I am not sure whether there is such a law but I am sure the intention of the Committee was to make $50 per diem compensation the exclusive compensation. That was to be all that the delegate gets. I guess the answer is we have to check the statutes.

THE CHAIRMAN: Wouldn't it be simpler to make it clear in that statute whether or not there is anything else and for matters of public relations also to spell out that the $50 is a per diem payment covering compensation and expenses.

MR. SCANLAN: Yes, we could do it that way. That creates other problems.

MR. CLAGETT: No more than this.

MR. SCANLAN: That might indicate you could get less.

MR. CLAGETT: Put in $50.

THE CHAIRMAN: Shall receive for his

compensation and reimbursement of expenses a per diem payment of $50.

MR. SCANLAN: Fine. We will add that.

MR. MILLER: Mr. Chairman, would there be any occasion for the Convention to send delegations or Committees or something away from Annapolis on a fact-finding job?

THE CHAIRMAN: I should think there could be. If we do our work sufficiently well, it might not be necessary, I don't know.

MR. MILLER: The thought I had is that $50 for expenses and so on might not take extraordinary expenses. If some members were sent to Chicago or somewhere, it might cost $50 to go there.

MR. SCANLAN: Under the provision which says the Convention may authorize such other expenditures as seem to it desirable for its work would cover the Convention authorizing travel expenses for a select Committee if it had to go to Chicago as you suggest. I think we only encumber it by trying to work out any other language.

THE CHAIRMAN: Any other question on this section?

MR. BOND: I guess the Committee considered what could be basically unfairness. People from Western Maryland and from the outer reaches in lower Eastern Shore actually their net compensation will be much, much less than those from metropolitan areas of Baltimore and Washington who commute. Has the Committee considered that and decided that there should be no travel allowance?

MR. SCANLAN: We considered that. There may be -- I think you overstate it -- rather minor inequities. Hopefully the delegates will remain in session and some will try to get back to their places of business. When you start giving a travel allowance, you get into further red tape and calculations. I concede that this provision might effect some minor inequities on those delegates who come from greater distances but in the interest of simplicity, we arrived at $50.

MR. CLAGETT: I would say by further comment

with respect to the amendment as we have it here for his compensation and expenses would certainly take care of that item and where he was authorized to go out to Chicago on a special mission, it would be a Convention expense.

MR. SCANLAN: That is right.

MR. CLAGETT: There would be no problem taking care of it on that basis.

MR. HARGROVE: Did the Committee consider that there might be some members of the Convention who might have to spend a considerable amount of time, for example, the President and the several other people who are elected who might have to spend a tremendous amount of time, I can think of the President being involved almost ten or twelve or fourteen hours a day, some additional compensation to them.

MR. SCANLAN: We didn't consider it. My own personal reaction would be that would be the price of glory and prestige.

MR. CLAGETT: As a matter of fact, we did consider it along that line.

MR. SCANLAN: I guess we did.

MR. CLAGETT: We also discussed who we were going to have as President.

MR. SCANLAN: Don't reveal our whole hand.

THE CHAIRMAN: Any further question on this section? If not, move on to Section 10.

MR. SCANLAN: Section 10 provides for the oath the delegates would have to take before entering upon their duties. I believe in my dear friend here we will find no objection to this simple oath. We have eliminated all reference to the diety and divine providence and other divine beings.

THE CHAIRMAN: If she doesn't object to it, I will.

MRS. BOTHE: I will leave it to the Chairman.

MR. SCANLAN: Don't you object?

MRS. BOTHE: Actually I think it is superfluous. I don't object to it. As a matter of fact, Miscellaneous Provisions Committee is the one that suggested a general constitutional oath very similar in language. I don't particularly see the necessity for

spelling one out here.

THE CHAIRMAN: Mr. Gentry.

MR. GENTRY: Not entirely facetiously but this oath calls for the support of the Constitution which they are going to immediately undertake to rewrite.

MR. CLAGETT: Of the United States.

MR. SCANLAN: The Constitution of Maryland permits people to gather to amend it in a lawful,orderly way which we hope this Convention will do.

MR. SAYRE: Gives us the right to overthrow it also.

THE CHAIRMAN: Any further questions on Section 10? My question, Mr. Scanlan, was whether or not you want the last phrase executé : the office of delegate to the Constitutional Convention of '67 according to the Constitution and laws of this state, because this Convention is not in accordance with the Constitution of this state.

MR. SCANLAN: That is a serious, you are suggesting the Convention that has been called in which these delegates will serve is not in accordance with

the laws of this state?

THE CHAIRMAN: No, I don't say that. I said according to the Constitution of this state. I think it would be better to stop simply with the Constitutional Convention of 1967. Execute the office of delegate to the Constitution Convention of 1967.

MR. SCANLAN: If we accept the Attorney General's view that the Legislature under the present Constitution has the inherent power to call this Convention, then it is not inaccurate to say that he will execute his office according to the Constitution and laws of this state. I am afraid if you leave it out, you betray a lack of confidence in the legality of the Convention under the present Constitution.

MR. DELLA: The Constitution now in effect will still stay in effect until the new Constitution is evolved and adopted. So wouldn't this be appropriate to have it in there?

THE CHAIRMAN: I didn't hear.

MR. DELLA: The Constitution would still be

in effect until the new Constitution is developed and adopted by the Convention, they would have to have something to work with. I would feel the present Constitution would be the one guided by or otherwise you wouldn't have any Constitution.

THE CHAIRMAN: That has been my, speaking only personally, my theory of the Convention anyhow but I am not making any motion or suggesting that anybody make a motion. Merely directing your attention to it.

MR. CLAGETT: I think this language is clear that he then undertakes to do all that. It doesn't refer back to the past in any way. It seems he then undertakes the obligation from that point on to go ahead and do to the best of his judgment, diligently, and faithfully, without partiality according to the Constitution and laws of this state. In that sense I see no reason not to include it.

JUDGE ADKINS: Suppose you say according to law and change the whole phrase? Wouldn't that answer it? There must be some law governing it.

MR. SCANLAN: Hopefully.

MR. HARGROVE: This law would be in effect then.

THE CHAIRMAN: This might conceivably have some bearing upon the question discussed on the earlier section as to whether the Convention could disregard limitation on the length of its session imposed by this law. Its members would be taking an oath in effect not to do so.

MR. MARTINEAU: That applies to this phrase we have in here.

THE CHAIRMAN: Yes.

MR. SAYRE: I would move that we do delete all the words after 1967. I think there is a question myself.

THE CHAIRMAN: Is there a second?

MRS. FREEDLANDER: Second.

THE CHAIRMAN: Do you want to discuss it further?

MR. SAYRE: My succinct point is I don't see how we damage our rights to act according to the laws

of the state.

THE CHAIRMAN: Any further discussion?

MR. HOFF: I had the feeling that the deletion of the words Constitution and, if there is any question about the constitutional provisions being binding, according to the laws of this state, because the delegates are elected according to the laws of the state passed by the Legislature.

THE CHAIRMAN: Do you accept the amendment, Mr. Sayre?

MR. SAYRE: How does it read?

THE CHAIRMAN: Amendment to be to strike out the words constitution and, leave in the phrase according to the laws of this state.

MR. SAYRE: Yes.

THE CHAIRMAN: Mrs. Freedlander.

MRS. FREEDLANDER: It is redundant because up above you support the Constitution and laws thereof. You are already supporting that in your affirmation. I seconded it because I thought it was redundant.

THE CHAIRMAN: You do not accept the

amendment?

MRS. FREEDLANDER: Therefore I do not.

THE CHAIRMAN: Any further discussion?

MR. SAYRE: This bill itself, I think, will be the key.

THE CHAIRMAN: Mr. Hoff, do you want to move an amendment to the motion?

MR. HOFF: No, I don't feel that strongly about it.

MRS. BOTHE: Mr. Chairman, the office of a delegate to the Convention is an office which falls within the present Article 2, Section 6 of the present Constitution, I suppose. It does set out an oath that everyone elected or appointed to any office of profit or trust under this Constitution or under the law shall take. The oath is very similar to this one but it is not the same. I suggest that by deleting this oath and putting the delegates in the same position as all other people elected to office under the law, we could simplify and avoid any conflict.

THE CHAIRMAN: Are you suggesting an amendment

to the motion?

MRS. BOTHE: I don't know if an amendment is in order. I would suggest that Section 10 be deleted because it is in conflict with the existing Constitution.

THE CHAIRMAN: Do you accept it?

MR. SAYRE: That we delete the entire section?

THE CHAIRMAN: Yes.

MR. SAYRE: I would rather vote it up or down.

THE CHAIRMAN: Any further discussion? Ready for the question? The question arises on the motion to amend Section 10 by eliminating the closing phrase according to the Constitution and laws of this state. Those in favor signify by saying aye. Contrary, no. Chair is in doubt. Those in favor signify by show of hands.

MR. CLAGETT: This is what?

THE CHAIRMAN: Eliminating the last clause according to the Constitution and laws of this state.

Contrary. Motion carried twelve to six. Mrs. Bothe?

MRS. BOTHE: I move deletion altogether of Section 10. I would call the Commission's attention to Article 2, Section 6, on Page 12 of the red book.

THE CHAIRMAN: Is the motion seconded? Any second? Motion dies for want of a second.

MRS. BOTHE: I would like to say one thing even though I know there is no motion on the floor. I too am concerned lest there be anything improper about the legislation which authorizes the Convention. The way I read this Section 10 would be unconstitutional. I think it would be rather foolish of us to suggest an unconstitutional law to convene a new Constitution.

THE CHAIRMAN: Why would it be unconstitutional?

MRS. BOTHE: Section 6 says what the oath shall be and says no other oath shall be prescribed and here we are prescribing another oath.

THE CHAIRMAN: I would like to remind the Commission in this connection that very early in our work we were considering the question of whether the Constitution and the office of Delegate to the Convention

not
was or was/an office of profit under the Constitution as it is today. The conclusion on that question was that it was one of doubt. We did not obtain a formal opinion from the Attorney General. We did consult the Attorney General informally. He inclined to the view that the office of delegate would be an office under the language of the existing Constitution but said that there was support for the view that the office of delegate to a Constitutional Convention was an office over and beyond the Constitution. I merely make that as a comment pending Mrs. Bothe's suggestion.

MRS. BOTHE: Says Constitution and laws and this is certainly the law under which a person would be elected to office of profit or trust.

MR. MARTINEAU: Mr. Chairman, I am now convinced, and I will second the motion, that the oath in Section 6 of Article 1 --

THE CHAIRMAN: Do you renew your motion?

MRS. BOTHE: Yes.

MR. MARTINEAU: I second it.

THE CHAIRMAN: Motion to delete the entire

section.

MR. MARTINEAU: To substitute Section 6 of Article --

THE CHAIRMAN: Mrs. Bothe's motion was to delete this section and allow Article 2 to have its effect, is that correct?

MRS. BOTHE: The actual effect would be that delegates would take the oath prescribed in Section 6 of Article 2. I would just as soon not see any reference made.

MR. SCANLAN: I will go along with the amendment provided that Section 10 makes it clear that the delegate will be required to take the oath now prescribed by Article 2, Section 6. I think a man should be advised of an oath he has to take and not leave it in silence.

MR. HAILE: Correction, Article 1.

MR. SCANLAN: Yes.

THE CHAIRMAN: I take it Mr. Scanlan suggests an amendment instead of deleting this Section, you would have to provide that the delegates to the

Constitutional Convention would take the oath prescribed by Section 6 of Article 2.

MR. SCANLAN: Yes.

THE CHAIRMAN: Would you accept the amendment?

MRS. BOTHE: Article 1, I accept it.

MR. MARTINEAU: I accept it.

THE CHAIRMAN: Is there further discussion? Ready for the question? Question arises on the motion to redraft Section 10 so as to provide that delegates to the Convention shall take the oath prescribed by Article 1, Section 6, of the present Constitution. All in favor signify by saying aye. Contrary, no. Ayes have it. So ordered. Any further question on Section 10?

DR. MICHENER: Under policy of making everything affirmative here I assume the words will be inserted rather than reference to the Constitution.

MR. SCANLAN: It is a very long section.

THE CHAIRMAN: I take it the effect of the motion was not to quote the oath but simply to provide by reference that the oath prescribed by that section

be taken?

DR. MICHENER: This is contrary to your earlier policy.

MR. MARTINEAU: That is only typical.

THE CHAIRMAN: Any further discussion of Section 10. Section 11.

MR. SCANLAN: This, I hope, will be a noncontroversial section. This section requires the Convention to keep a journal of its proceedings, reports to be made, publish them, purpose is to keep the public and interested officials of this state aware of what the Convention is doing.

THE CHAIRMAN: Any questions?

DR. MICHENER: I understood it was inherent power of a Constitutional Convention to adopt its own rules of procedure specified in Section 8. Section 11 and 12 attempt to specify certain rules of procedure. If you do this, it seems to me there is a serious lack in Section 11 that it should go further and state the sessions shall be open to the public.

THE CHAIRMAN: I assume publication means

communication to the public.

THE CHAIRMAN: I don't think that is Dr. Michener's point. I think his point is if you are going to provide this much detail as to the sessions of the Convention you should provide that the sessions of the Convention be open to the public.

MR. SAYRE: I agree with that. I didn't realize there was any real doubt about that. You mean it would be a secret Convention from which the public would be excluded?

DR. MICHENER: Could be.

MR. SCANLAN: I think you have to have some faith in people. I can't imagine a Convention of this state gathering in secret.

MR. SAYRE: It is not a matter of lack of faith but explicit instruction. I think if we take the language we put into the legislative department article, which is also required, that accomplishes the same purpose we want here.

MR. SCANLAN: If someone has language I am amenable to listening to it.

THE CHAIRMAN: My recollection is that the legislative article has no express provision that sessions be public.

MR. SAYRE: That the journal be published.

THE CHAIRMAN: That's not being talked about now. The question here is sessions.

MR. SAYRE: I was referring to Section 11 where we say shall keep a journal of the proceeding and I thought we meant shall publish such a public journal.

THE CHAIRMAN: The suggestion went beyond that. We were talking about sessions of the Convention.

MR. SAYRE: We may have a problem of space and accommodations and everything else. How far are you going to extend it?

MRS. FREEDLANDER: I would like to pick up the second point Dr. Michener made. In Section 8 we say the Governor shall convene a Convention and so on for organization of the Convention for election of members of committees for adoption of rules of order. Why couldn't we just add these two items and do away with these two sections?

Add to section 8 where we are talking about rules of procedures, the matter of a quorum, for instance, twelve would be a rule of procedure. Keeping a journal is a procedure rule.

MR. SCANLAN: Keeping of a journal is, I think, of a different, it rises beyond the ordinary procedure rule situation. Making the proceedings of the Convention public it seems to me is important enough to warrant a special statutory provision. As Mr. Hargrove reminded me, it is not only to inform the public and those interested, but also to provide a legislative history of these important proceedings. I think rather than being sandwiched in a long section which deals with the power of the Convention to prescribe its procedural rules, its organization, that the duty of the Convention to keep a journal and publish it, make it available is something that warrants separate treatment.

THE CHAIRMAN: I might remind you the Constitutional Convention of 1867 decided not to do this.

MR. SCANLAN: Not to do what?

THE CHAIRMAN: Not to keep a journal of its proceedings and reports, a transcription of its debates. It was the purpose of the Committee here to make it clear that was not to be the procedure to be followed in 1967.

MR. BROOKS: Also the current Rhode Island Convention is not keeping a journal for all intents and purposes and that will be a future problem of that Convention.

THE CHAIRMAN: Any further comment or question on Section 11? Section 12.

MR. SCANLAN: This is a section that deals with the number of delegates that constitutes a quorum. Majority of the whole number of delegates to the convention shall constitute a quorum for transaction of business but, of course, a smaller number may adjourn from day to day, provided, however -- I believe this section was not in our first draft, put in there as a result of action taken by this Commission with respect to one of our prior reports, provided, however, that a final vote of the Convention approving a proposed

new Constitution for submittal to the voters of the state, et cetera, shall require a majority of the whole number of delegates to the Convention. I specifically recall Mr. Ridgely Melvin, former member of this Commission, now on the Circuit Court for Anne Arundel County, was the author of that proposal.

THE CHAIRMAN: Any question? Discussion? Section 13.

MR. SCANLAN: Section 13 prescribes how the proposed new Constitution or changes or recommended proposed changes are to go to the people. Certified by the secretary of the State Board of Election Supervisors of the various political subdivisions and there will be a special referendum election on May 14, 1968. I might add parenthetically if by that time the new Legislature has moved the primary date back from September to May, usually I guess it is the first Tuesday in May, then I suppose there would be no real objection to changing that date to have this referendum election held on primary day much like the referendum on the call of the Convention was held on the primary, on the September 13

primary this year. The referendum will be conducted pursuant to the general election laws except as we have recommended modification or change in this act. I think the rest of it is there for you to read. I won't take up your time by reading it to you.

DR. JENKINS: Mr. Scanlan, how are the people going to know what is in the Constitution? It is unrealistic to provide for its publication in a newspaper yet there is nothing here which says the Convention is required to disseminate its final document.

MR. SCANLAN: Actually the Convention will adjourn no later than January 12, 1968. Whereas the referendum on its adoption or rejection would be conducted five months later. Certainly we hope during that period of time that people of the state will, one, be interested enough to inform themselves as to what is in it. It will receive a maximum degree of publicity. I don't know what more one can do to guarantee that the electorate will know they are going to be called to vote on a Constitution.

I don't think we could have the whole

Constitution written on the ballot or the voting machines. Hopefully the broadest possible publicity would be given to the new Constitution both by those in favor of it and by those who oppose either all or several of its provisions.

DR. JENKINS: I would suggest to the Committee that we are specifying so many things here we should at least specify that the Convention shall give adequate, the way in which it shall give publicity.

MR. SCANLAN: It won't be the Convention's function. They will have gone home on January 12, having done their work. But your point is there should be some active command in here for somebody to do something to publicize it.

DR. JENKINS: I think there must be if the electorate is going to be able to cast an intelligent vote. This isn't the sort of thing one can summarize or learn about through editorials in the Sunpapers.

THE CHAIRMAN: Mr. Brooks.

MR. BROOKS: I hope that all of you received a copy of the Florida Constitution that was published

in their newspaper prior to the election and the newspapers in Florida did in fact have special editions with the entire Constitution in it. This is not unusual practice and I would think that if the newspapers here did not do that kind of thing, that the League of Women Voters as well as probably the Secretary of State would put out copies for general distribution for anyone interested.

DR. JENKINS: I simply raise the question.

MR. GENTRY: It is said here the referendum shall be conducted according to general election laws of the State of Maryland which requires publication.

MR. BROOKS: That includes three newspapers in Baltimore, I believe.

MR. BOND: It seems Mr. Scanlan goes in great detail on publication of list of delegates. Why not go to the same detail on publication of the Constitution?

MR. SCANLAN: I think Mr. Gentry just answered that. It has to follow the general rules

regarding methods of publication of referenda which will insure its publication in at least three newspapers of general circulation throughout the political subdivision.

THE CHAIRMAN: Mr. Scanlan, Inote the last clause of Section 11 authorizes the Convention to provide for the publication of any of its other documents and reports. I take it that the Convention, if it deemed wise, could authorize preparation and publication of a summary or explanation?

MR. SCANLAN: I am sure that language would be broad enough to cover that.

THE CHAIRMAN: Any further discussion on 13?

DR. BURDETTE: I am a little uncertain whether the Committee may have considered or whether this language indicates it has considered the possibility the Convention might like to submit the Constitution in part. There is a certain inference here but it seems to me if it is so that the determination is in the wrong place. On Page 11 where the sentence begins at said election, there shall be printed upon each ballot

or each ballot label such appropriate ballot title or titles as the Attorney General of the State shall determine. Does that carry an inference that the Attorney General could decide that this Constitution is separable and people could vote on Part A, Part B, Part C?

THE CHAIRMAN: I suppose not.

DR. BURDETTE: But in any event, has the Committee considered leaving to the Convention the power to do that if it wanted to?

MR. SCANLAN: Do what if it wanted to?

DR. BURDETTE: To divide the Constitution in such fashion that it could be separated into parts. In some states this has been necessary in order to get the Constitution adopted. This is the thing that defeated the Constitution of New Jersey when it was first drafted because it was submitted in blocks. Various parts accumulated enough enemies to defeat it. This is only a question of strategy but should it be left to the Convention.

MR. SCANLAN: Answering your several questions in a row, there is no question that the convention would

have the power not to submit a whole new Constitution. Section 13 says if a new Constitition or change or amendment of the -- it could do any of those things.

The language referring to the Attorney General's duty to determine the appropriate titles takes into account the fact that, one, they might submit a whole new Constitution or, two, they might submit a series of amendments, in which case he would have to give several titles, one for each proposed amendment. The Attorney General --

DR. BURDETTE: That answers it but with that answer, I suggest the language ought to be clear because on top of Page 11, third line, there is language by whom it shall then be submitted. As if it were one single question, yes or no.

MR. SCANLAN: The "it" refers back to either a new Constitution, a change, or amendment.

THE CHAIRMAN: Mr. Scanlan, I think implicit in Dr. Burdette's question is the idea that you might have a new Constitution,not a change or amendment of existing Constitution but one which the Convention

might decide to submit to the electorate in parts. For instance, there may be some article or one section controversial and the Convention should perhaps decide that that should be submitted separately to a vote for approval or rejection. His question is are you foreclosing this possibility in the language you use?

MR. SCANLAN: Very frankly, I think under the language used, if the Convention wanted to proceed along the lines to which you referred, it could do it simply by proposing a series of amendments that it would have a title A to amend the present Constitution, following articles of the present Constitution. Then it could have a second proposed amendment to amend the following several articles of the proposed Constitution.

THE CHAIRMAN: I will give a simple illustration. Suppose the Convention adopted a new Constitution but had considerable debate over whether it should contain a prohibition against lotteries and decided the new Constitution should be submitted with the exception of the prohibition against lotteries and the prohibition against lottery submitted as a separate

question. Is that what you have in mind?

DR. BURDETTE: Yes.

THE CHAIRMAN: It seems he has a point that the language you use might prevent that. I don't know whether you think it is desirable or not desirable, only talking about the language you use. Whether you intend it to be prevented or not.

MR. CLAGETT: I suggest to Mr. Scanlan if he substituted for the word "it" in the third sentence the two words "the matter" you have the cure.

THE CHAIRMAN: May I ask this. I think what is implicit in Dr. Burdette's motion is language which would say that the same shall be forthwith certified by the Secretary of State to the Board of Election Supervisors and so forth by whom it shall then be submitted in the manner specified by the Convention, if this is what the Committee means to recommend.

MR. SCANLAN: I don't think we did. I think if the Convention wanted to submit separate amendments, it could do so but hopefully it would submit one document. We did not take into account, I don't

think we discussed it in these terms, whether the Convention itself could segregate out some more controversial proposals and submit those separately from the entire Constitution. I for one would not like to see that. I think it should be a series of amendments or a whole document.

THE CHAIRMAN: I think that answers your question, Dr. Burdette. Do you want to make a motion?

DR. BURDETTE: I don't feel strongly about it but I suppose I would move that this matter be left to the Convention. That the language be drafted to permit it.

THE CHAIRMAN: Is there a second?

MR. CLAGETT: Second.

THE CHAIRMAN: Do you want to say anything further?

DR. BURDETTE: It seems to me that we shouldn't go to the expense in Maryland of having a Convention which might have several very hot questions. For example, you suggest lottery. Unicameral Legislature would be another one.

THE CHAIRMAN: Pinball machines in Southern Maryland might be another.

MR. CLAGETT: That would get it through without trouble.

DR. BURDETTE: We could perhaps get a new Constitution in a noncontroversial section if we separated the controversial ones from it. But I don't think we ought to prejudge this. I think we ought to leave it to people like us who are in the Convention, the privilege to deal with this as in their judgment seems equitable. I would have faith that they would not engage in sharp practice because that would be self-defeating. They would try to separate the things out that would not destroy the body of the Constitution.

MR. SAYRE: I would take the opposite approach in that if there are these difficulties in the Convention I assume the Convention would compromise, bring out a document. If you leave it where one part may be accepted and another part rejected, you don't have an integrated Constitution. I think you got to submit one document.

THE CHAIRMAN: Any further discussion?

MR. CLAGETT: In support of Dr. Burdette's motion I think it is a very practical approach one which really might be the means by which at least a substantially new document would be brought forward successfully whereas otherwise it might well be defeated.

MR. BROOKS: I would have to take a different position which is that you can't really draw a completely new Constitution with the various articles inter-related to the extent that this Commission is recommending a new Constitution and then be in position of having any one article accepted or another one rejected. It would leave the resultant Constitution in worse shape than the present Constitution of Maryland is because one article would work under one theory and the very next article that may have been retained from the old Constitution would retain a different theory. I don't think it is a practical approach. I think the Constitution in the case of an overhaul of the significance being contemplated has to be accepted or rejected in its

entirety.

THE CHAIRMAN: Any further discussion? Ready for the question? Question arises on the motion to amend Section 13 so as to provide that a new Constitution may be submitted in parts for the approval or rejection of the electorate as determined by the Convention. Ready for the question? Those in favor, please signify by show of hands. Contrary. Motion is lost four to fifteen. Any further discussion of Section 13?

MR. CASE: I have a point. I am not sure of my ground here so I will put it by way of question to the distinguished Chairman.

This particular section says in substance that the Convention can propose an amendment. Let's assume for purposes of discussion here that the only thing that the Convention feels it really wants to adopt are the budget amendments talked about this morning. I am using that only for purposes of illustration.

MR. SCANLAN: Obviously a very hypothetical

example.

MR. CASE: And that is all. Under the Section 13 apparently this could go forward as an amendment to the existing Constitution. My question is this. Is this a valid way to do it in view of the fact that the present Constitution would still be in force and effect and Article 14, Section 2, deals with the method of amending the Constitution. Unfortunately, the Convention which this bill envisages will not be the Convention that Section 2 of Article 14 talks about.

MR. SCANLAN: I think you are sneaking around to your perennial objection, I won't say objection, your skepticism about the legality of the Convention itself.

MR. CASE: No, this is a different point. The point is assuming the Convention is perfectly legal and valid to produce a new document, but they for some reason don't come up with a new document, as this section suggests they might not, but only come up with an amendment. Now they are going to propose an amendment.

And that's all. The present Constitution says that an amendment can be proposed by Convention but the Convention that the Constitution talks about is an entirely different type of Convention composed of different people and set up in a different way than this Convention would be. I am questioning now whether or not the amendment would be a valid amendment, whether it would be meaningful.

MR. SCANLAN: I think the greater includes the lesser and if one accepts the assumption, the Legislature has inherent power to convene that Convention and delegates who go there to serve in it are acting within powers, acting within the scope of constitutional authority and exercising inherent right of the people to change their constitutional form of government, if they can change it completely, I think they can change it in part.

MR. CASE: I don't have with me the opinion of the Attorney General you recall was given to the Governor before the appointment of this Commission.. You will recall that that opinion of the Attorney General

stated that the Legislature had the inherent power to call a Constitutional Convention independently of Article 14, Section 2. My recollection is that his opinion said for the purpose of altering by amendment or rewriting the Constitution, I don't mean those precise words.

MR. BROOKS: There is a fine line, you might say, between amendment and drawing a new Constitution in that even if you wanted to adopt only the budgetary provisions, you could do it, if not by amendment, by submitting a new Constitution that is precisely like the old except this exception.

MR. CASE: I appreciate that and certainly that would be the technical way around it, but certainly it flies in the very teeth of the existing Constitution, as far as amendments are concerned.

THE CHAIRMAN: Any further comment or discussion? Do you have a motion?

MR. CASE: I merely raise the question for the record because if the so-called amendment, if an amendment is adopted and thrown out, I don't want anybody

to say to me you didn't know what you were doing.

THE CHAIRMAN: Any further comment?

MRS. BOTHE: In view of Mr. Scanlan's view that it would be inimical to have a piecemeal Constitution proposed to the voters, I wonder why the Committee feels it necessary to refer to the possibility of amending the Constitution in the Convention. Certainly that's not what anybody is aiming to achieve by this convention. Why not just delete the reference to amendments.

MR. SCANLAN: I think naturally most of us here hope that the Constitutional Convention, when it completes its work, will have come up with a new charter of government. You don't always get the best of all things in this world. It is very possible that even in the realm of probability that we will have four months of a hard working Convention that can agree on a number of fundamental changes in the government of this state but cannot necessarily agree on an entirely new document. I think at least we should have the benefit of what they agreed upon. If they agreed, for

instance, on reform of fiscal section, budget section and judiciary and Legislature, but couldn't agree on a new executive article or any other article, I still think it will not have been what we hoped for but it will still be worthwhile to have these changes put to the people.

MR. CASE: To obviate the point I make, why not provide in substance the things Mr. Brooks said by requiring at least a complete document to be submitted and those points that couldn't be agreed upon be included and the new points be included so that you don't have an amendment submitted to the people but you have a Constitution submitted to the people? What is wrong with that?

MR. SCANLAN: I think Mr. Brooks was trying to meet your technical point.

MR. CASE: Perhaps so but it is better to meet the technical point with a technical approach and have success than fall down completely with just an amendment. This invites, as I see it, the possibility of submitting an amendment. I am saying to you that

I think, I am certain this will be challenged.

MR. SCANLAN: I am not so sure of that.

MR. CASE: I will challenge it. I will make it certain if I am still here just to remove that argument.from the context of what we are discussing.

MR. SCANLAN: Can't remove it that way. In any event, if it turns out the Convention completes its work and does not come up with a new document and at that time it is the considered judgment of members of the Convention plus the considered judgment,say, of the Attorney General, whoever he may be,and Governor at that time, that your somewhat conjectural point has any validity, I assume they could very easily do what Mr. Brooks suggested they could do. No need for us to put in the document. On the other hand, if they agree with me that your point approaches the spurious there would be no need to do that. They can make the judgment at that time.

MR. CASE: What harm would be done by doing exactly what Mr. Brooks suggested,where would you lose anything?

MR. SCANLAN: I think if you start drafting language which indicates they have to come up with a complete Constitution, this suggests that unless they come up with a complete Constitution, they can't come up with anything. It is entirely possible that they might not reach agreement on a complete Constitution.

DR. MICHENER: Mr. Scanlan, in reference to question about it on Line 3, Page 11, says the power to enact the whole implied power to do the lesser. Why do you think differently in this instance?

MR. SCANLAN: I don't get your point.

DR. MICHENER: Here they specified Constitution or amendment. You said no need to specify amendment because they had power to adopt a Constitution and had the power to propose amendments. Why do you feel differently on this point now? They have the power to draft a full document, by your logic a few minutes ago, they would have power to draft amendments.

MR. SCANLAN: I agree but I don't understand the inconsistency.

DR. MICHENER: Your objection?

MR. SCANLAN: My objection to Mr. Case's point?

DR. MICHENER: To just specifying that they shall draw up a document, new Constitution, which would imply they had power to do the lesser thing.

MR. SCANLAN: No, I am not so sure that's true. If this Commission is to draft a complete Constitution, then the argument can be made that they are commissioned to do no other thing,that they must draft a new Constitution or they draft nothing.

THE CHAIRMAN: Any further question or comment? Any motions as to Section 13?

MR. CASE: You are convinced in your own mind based upon the research that you and your Committee have done that the Constitution can be amended in this way?

MR. SCANLAN: Let's put it this way. No matter how you cut it, the questions you have raised relate to the skepticism that some have -- and you voiced it early in the meetings of this Commission -- of

the legal basis on which this whole Convention is to be convened. If you are right, and your skepticism turns out to be correct, then clearly the whole procedure is illegal.

MR. CASE: No, this is a completely erroneous interpretation of what I am saying in an effort to protect your particular provision here. All I am trying to do is to see or hopefully see that this thing doesn't go down the drain by reason of some mistake we make now. I am not arguing with you. I am trying to be helpful in the sense that if we can obviate a bum argument which would come up later, now is the time to do it in this bill. Let's face the fact that if there are two ways of doing something, one which will cut away the arguments and won't hurt anything, this is the thing we ought to do.

MR. SCANLAN: There I will have to rest with the opinion of the Attorney General to which Mr. Eney referred.

MR. CASE: I will add I don't share the skepticism, you say some -- I suppose you speak of me --

I have no skepticism about the validity of the Constitutional Convention or its power to bring in a new document. All I am saying is I do have some genuine doubt about the power of this Convention just to bring in an amendment when the Constitution itself specifically provides how amendments as distinguished from new documents shall be brought forth. If you just amend, then it seems to me the arguments will be made, you are thrown back on the existing Constitution and not having followed the procedures set forth therein, you are hung up. I am saying to you if it is possible to cut the ground away from that argument now, now is the time to do it.

JUDGE ADKINS: The thing that confuses me about this discussion is I dont see how this bill, which is in essence a housekeeping bill, can in any way affect the powers of the Constitutional Convention. No matter what you put in this bill, the Constitutional Convention, if it is legally called, either has the power or it does not have the power to submit an amendment.

I don't see how anything said in this bill is going to affect that question. It seems to me to be a complete booby trap operation. Am I wrong on this? I don't really think it matters what you say here insofar as the manner in which the bill shall be submitted by the Convention. That is a matter for the Convention once the Convention comes into being. If it is constitutionally in being, they can decide how it will be submitted. If not constitutionally in being, no matter what you say here, it will make no difference.

MR. SCANLAN: I am inclined to agree with that.

JUDGE ADKINS: This argument would seem to me to be more or less moot.

MR. SCANLAN: I think you are right. In the true sense, the constitutional sense, the argument may be a moot one. On the other hand, it seems to us to do no harm to specify in the bill the way we would like the Convention to behave even though we concede they have the power to behave differently if they so determine. But I agree with you constitutionally they

probably could submit it to the voters the way they wanted to.

MRS. BOTHE: The objection, I think, is Judge Adkins, that Section 13 the way it is worded is an invitation to the Convention to do less than produce a new document. It can produce a new document which is somewhat the same as the present one with amendments but at least it is an entire new document or taken to the voters as an entirety. Since nobody wants to do it, I don't want to make another motion I feel constrained to, I will move that the words change or amend be deleted from Page 2, Section 13, and that the sense otherwise of Section 13 be that a new Constitution and only a new Constitution be proposed and that the provisions of that Section apply to the proposal of an entire new Constitution.

THE CHAIRMAN: Is the motion seconded?

MR. CASE: I second it.

MR. SAYRE: I would oppose this deletion on the basis of exactly the arguments of Judge Adkins and Mr. Scanlan. Suppose that we simply have an amendment

to the Constitution and we submit the entire Constitution with this amendment to the people. If you vote that Constitution down, we don't have a Constitution. So the only way you can submit it is have an amendment if you are going to have an amendment , otherwise it has to be a new document.

MR. CASE: You have the existing Constitution.

MR. SAYRE: You don't have the existing Constitution if you submit the existing Constitution which is turned down.

MR. CASE: Certainly you have the existing one.

THE CHAIRMAN: Don't argue about it. Any further debate?

MR. CLAGETT: Mr. Chairman, I don't see that this language as written now obviates or restricts the Convention from acting in any way it sees fit. Either by way of amendment or by new document or new document which is an amendment. Therefore, we are really doing something that is unnecessary.

MR. HOFF: Echoing your former query, do

we really have the authority to make such limitation under the legislative authority we have?

THE CHAIRMAN: I am not sure I follow you. Do we have the authority to do what?

MR. HOFF: To eliminate the possibility of a Convention coming in with an amendment.

MR. DELLA: Convention is supreme power.

MR. BROOKS: We are not deleting that opportunity or their freedom to do so if you follow what Judge Adkins was saying in that they have the power regardless of what we say pro or con. Whether they are to come back with amendments or a whole new document, they can still come back with whatever they like.

MR. MARTINEAU: I think I agree with Judge Adkins and Mr. Scanlan. I don't think you can control it but I think you are inviting the bum argument if you do take out the language that we have here and merely provide only that they can come in with a complete new document. I think you are inevitably inviting a contest over whether they can come in with anything less than that. I think my research in the law of constitutional

conventions would indicate that you cannot so restrict a constitutional convention. I would hate to see this bill attempt to do so.

DR. JENKINS: I am not a lawyer but it is very clear here, in the present Constitution, it says any constitution, two ways of submitting amendments, one, the normal way, one by constitutional convention.. Any constitution or change or amendment of the existing constitution which may be adopted by such convention. It is quite clear that as Judge Adkins says, this law would not be, the proposed statute would not be overriding.

THE CHAIRMAN: Any further discussion? Ready for the question? Question arises on the motion to amend Section 13 so as to eliminate any reference to change or amendment of the existing constitution. A vote aye is a vote in favor of eliminating those words. All in favor, please signify by show of hands. Contrary. The motion is lost five to thirteen. Any further discussion of Section 13? Section 14.

MR. SCANLAN: Section 14 is that provision

of the statute which authorizes the Convention to prepare a schedule of when various provisions of the Constitution would take effect. Some might take effect at different times and it is necessary to have some order spelled out. We give the Convention here the power to prepare such schedule. The schedule to be attached to the proposed Constitution and will be submitted to the electorate to be ratified at the same time as the Constitution.

However, the schedule will not in itself be a constitutional provision or provisions. It will have the same effect as a general public law. If for reasons that become manifest to the General Assembly after the schedule had been ratified that some of its provisions should be accelerated or others deferred, then the schedule could be amended by the Legislature to accommodate the situation.

MR. HOFF: Suppose the Legislature was anti-new constitution and deferred effective date of all provisions of the Constitution until December 1, 1998.

MR. SCANLAN: I think that would be an

abuse of the legislative power.

MR. SAYRE: It would not be binding on the following session.

DR.MICHENER: The way this is worded now seems to me to be ambiguous. The way it is stated it could be ratified at the same time as the Constitution which implies you might have separate vote. You want to be attached to the proposed Constitution at the time it, referring to the proposed Constitution, is submitted to the electorate to be ratified. It seems to be a serious mistake because if this has the effect of a general law you should not have votes cast against the Constitution because the electorate doesn't like the general statute which can be amended. I don't think it should be submitted at all because if people don't like these provisions the way they vote against them is to vote against the Constitution and you will compound your negative vote.

MR. BROOKS: The practice of having schedules has been rather spotted in other states. The statutory authorization has been almost nonexistent for

such schedules but by more or less American common law tradition such schedules have been adopted as statutory materials. The enabling legislation for the most part has not provided for such schedules even where these schedules have been provided for by constitutional conventions. I think really this is another one of the points where if this bill said nothing, the Constitutional Convention can provide for the schedule arrangement.

On the other hand, I think it should be clarified initially and in this case rather than a negative suggestion as was suggested in Section 13, a positive suggestion that the Convention in fact utilize a schedule should be stated here. I think the limitation of what the effect of the schedule is that it is only worthy of law rather than of constitutional standing, should be spelled out in advance.

THE CHAIRMAN: Any further comment? Mr. Hoff?

MR. HOFF: I think you are giving the Legislature the power by deferring the effective date of any provision the power of veto over a constitutional

provision. I don't think that's right.

THE CHAIRMAN: You mean if the schedule provides for a deferring of the effective date?

MR. HOFF: Yes.

THE CHAIRMAN: Isn't that a question if I followed Mr. Brooks' suggestion that the Convention would consider in adopting a schedule or in the language of the schedule.

MR. BROOKS: The Constitution itself will state the date upon ratification that it will go into effect. That would not be a schedule item. The schedule, however, would provide for, for instance, a carry-over of legislative and executive and juducial salaries since they are being eliminated from the present Constitution until such time as the Legislature has an opportunity to provide some kind of law to replace what otherwise has been in the Constitution theretofore. That's the kind of material that would be in a schedule.

JUDGE ADKINS: Does this word schedule have a sufficiently precise meaning in constitutional law to be intelligible? A schedule to me normally means a

train schedule.

MR. BROOKS: I believe it is a term of art at this stage.

JUDGE ADKINS: Does it mean enough to be sufficient here without further definition? What does it mean precisely,talking about time schedule?

MR. BROOKS: Not necessarily.

THE CHAIRMAN: It is a misnomer in the sense in which we have been using it.

JUDGE ADKINS: You are satisfied that just using the term schedule without more --

MR. BROOKS: It is a term of art sufficiently definable not to require further definition.

THE CHAIRMAN: He is more satisfied on that than the Chairman is.

MR. CLAGETT: If it means interim legislation, then I understand, by what you are saying.

MR. BROOKS: That is right.

THE CHAIRMAN: Transitional.

MR. BROOKS: Transitional legislation.

MR. BOND: I move that Section 14 be deleted.

THE CHAIRMAN: Is there a second?

MR. MILLER: Second.

MR. BOND: My reason is I don't understand it. I understand you have to have transitional laws and I understand you have to have that but I feel the Convention itself could take care of its effective date. I hate to muddy the waters by throwing in something the Legislature can foul up the works of the Constitutional Convention. I heard Mr. Brooks and Mr. Scanlan both say it has not been utilized in other states.

MR. BROOKS: We are saying in regard to legislative salaries which are presently provided for in the legislative article of the present Constitution that a legislature may not set its own salaries. One thing that will have to be in the schedule, if not in the Constitution, will be some provision for the salaries of that legislature which is in session at the time this Constitution goes into effect since it cannot under any circumstances provide its own salary. Therefore, there is no salary provided for that legislature until maybe three years after the Constitution goes into effect.

MR.BOND: Am I correct in understanding that the Constitutional Convention can set its own schedule?

MR. BROOKS: This is questionable in Maryland because although this is practiced outside of Maryland and very common practice to provide schedules, no schedule has heretofore been provided in Maryland and we thought it should be clarified for that reason.

MR. BOND: You mean the earlier conventions?

MR. BROOKS: That is right, this is not Maryland practice but it is practice in other states.

MR. CASE: Mr. Chairman, I must confess I support Mr. Bond's motion for the same reason that he does. I don't think that any -- drawing on Mr. Brooks' observation -- that there has never been any such thing as this in the state, it seems to me that the Legislature and people who deal with this subject are not going to know what the word schedule really means.

I would be in favor of some provision in here of providing for the transitional period but to define it by the word schedule leaves me very cold. I don't know what I am voting for. I have seen a sample

of schedule here which Bob Martineau handed Dale Adkins and myself but if it is a word of art, it has escaped my ken in twenty-five years of practice of law in this state. I don't know what it means.

THE CHAIRMAN: Mr. Case, I think your comment goes beyond Mr. Bond's motion, as I understand it. He moves to delete the section not because of lack of clarity of the term schedule, but because he thinks the Convention would have the inherent power. I take it what your suggestion is that there be a section providing for a schedule by spelling out what you mean when you say schedule.

MR. CASE: That is right.

MR. BOND: I would accept an amendment because I don't understand what the words mean there.

THE CHAIRMAN: I forgot who seconded your motion.

MR. MILLER: I seconded it.

THE CHAIRMAN: Would you accept the amendment?

MR. MILLER: Yes, I accept anything.

MR. CASE: I offer an amendment which is

not in precise or definitive language that the section be re-referred to the Committee with direction to draft a provision dealing with transition which is more meaningful to Maryland lawyers, garden variety type, of which I am one, than the word schedule.

MR. BOND: I accept the amendment.

THE CHAIRMAN: Any further discussion? Ready for the question? All those in -- do you want to make a comment?

MR. SCANLAN: No.

THE CHAIRMAN: All those in favor of the motion, signify by saying aye. Contrary, no. Chair is in doubt. All in favor, signify by show of hands. Contrary. Motion is carried thirteen to six.

MR. SCANLAN: Can I ask Dick a question? Would his problem be solved if we insert the words after schedule where it appears in the second line of proposed Section 14, proposed schedule of transitional legislation? I think we will --

MR. CASE: I find myself in the peculiar situation of saying the matter is in your hands.

MR. SCANLAN: Thank you very much.

THE CHAIRMAN: Section 15.

DR. MICHENER: I hate to bring it up but the discussion was never resolved about whether the schedule should be presented to the voters for ratification. I know I can't move it but I would hate to see that lost. It might help defeat the Constitution.

THE CHAIRMAN: I will rule that the whole matter of the schedule is back in the lap of the Committee for consideration and report back to the Commission.

Section 15.

MR. SCANLAN: Section 15 is the section which declares this act would be an emergency measure. Of course, if passed by three-fifths of the composition of the two Houses of the General Assembly will take effect on the date of its passage, as I indicated earlier. Mr. Case raised the question earlier. We made it emergency legislation in order to insure there would be a sufficient amount of time from the date the law became effective and the election date of June 6, 1967, for delegates to file and the mechanics of the election to

proceed. I don't know if we want to go over again Mr. Case's objection.

THE CHAIRMAN: Not unless somebody wants to make a motion.

MR. CASE: It is not an objection,merely an inquiry.

MR. SCANLAN: Sorry.

THE CHAIRMAN: Any further discussion of this section? If not , that concludes the consideration of this report.

MR.HAILE: May I raise one more point on Section 12 to tidy it up so to speak. It says that a final vote of the Convention approving a proposed new Constitution shall require a majority. I suggest we add the phrase or change or amendment of existing Constitution just to tidy it up.

MR. SCANLAN: It will be consistent too.

THE CHAIRMAN: Any further comments, questions, or suggestions?

(The Commission adjourned at 9:25 p.m.)

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APR. 67

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